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## Dogfennau Ategol – Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Lleoliad: I gael rhagor o wybodaeth cysylltwch a:  
Fideogynadledda drwy Zoom P Gareth Williams  
Dyddiad: Dydd Llun, 9 Hydref 2023 Clerc y Pwyllgor  
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### O bell – Pecyn Atodol

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Noder bod y dogfennau a ganlyn yn ychwanegol i'r dogfennau a gyhoeddwyd yn y prif becyn Agenda ac Adroddiadau ar gyfer y cyfarfod hwn

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#### 4 Papurau i'w nodi

(13.40 – 13.45)

##### 4.3 Ymchwiliad Pwyllgor Gweinyddiaeth Gyhoeddus a Materion Cyfansoddiadol Tŷ'r Cyffredin i Allu Datganoli yn Whitehall

(Tudalennau 1 – 14)

Dogfennau atodol:

LJC(6)-27-23 – Papur 9 – Cyflwyniad y Pwyllgor Gweinyddiaeth Gyhoeddus a Materion Cyfansoddiadol Tŷ'r Cyffredin (PACAC)

##### 4.4 Memorandwm Cydsyniad Deddfwriaethol Atodol (Memorandwm Rhif 5) ar y Bil Ffyniant Bro ac Adfywio

(Tudalennau 15 – 19)

Dogfennau atodol:

LJC(6)-27-23 – Papur 10 – Memorandwm Cydsyniad Deddfwriaethol Atodol (Memorandwm Rhif 5)

##### 4.5 Gohebiaeth â'r Gweinidog Newid Hinsawdd: Datblygiadau ar ôl y cynnig cydsynio ar y Bil Ynni

(Tudalennau 20 – 48)

Dogfennau atodol:



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LJC(6)-27-23 – Papur 11 – Llythyr gan y Gweinidog Newid Hinsawdd, 3 Hydref 2023 [Saesneg yn unig]

LJC(6)-27-23 – Papur 12 – Llythyr at y Gweinidog Newid Hinsawdd, 27 Medi 2023

#### **4.6 Gohebiaeth â'r Gweinidog Newid Hinsawdd: Bil Seilwaith (Cymru)**

(Tudalennau 49 – 79)

##### **Dogfennau atodol:**

LJC(6)-27-23 – Papur 13 – Llythyr gan y Gweinidog Newid Hinsawdd, 3 Hydref 2023 [Saesneg yn unig]

LJC(6)-27-23 – Papur 14 – Llythyr at y Gweinidog Newid Hinsawdd, 27 Medi 2023

#### **4.7 Gohebiaeth gan y Pwyllgor Llywodraeth Leol a Thai at y Pwyllgor Busnes: Memorandwm Cydsyniad Deddfwriaethol Atodol (Memorandwm Rhif 4) ar y Bil Ffyniant Bro ac Adfywio**

(Tudalennau 80 – 81)

##### **Dogfennau atodol:**

LJC(6)-27-23 – Papur 15 – Llythyr gan y Pwyllgor Llywodraeth Leol a Thai at y Pwyllgor Busnes, 6 Hydref 2023

## **8 Ymchwiliad Llywodraethiant y DU-UE**

(14.00 – 14.20)

(Tudalennau 82 – 83)

##### **Dogfennau atodol:**

LJC(6)-27-23 – Papur 16 – Llythyr gan y Brif Weinidog Cymru, 6 Hydref 2023

# Tystiolaeth i ymchwiliad Pwyllgor Gweinyddiaeth Gyhoeddus a Materion Cyfansoddiadol Tŷ'r Cyffredin:

Gallu datganoli yn Whitehall

Medi 2023

Mae gan y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad yn y Senedd gyloch gwaith eang sy'n cynnwys ystyried materion cyfansoddiadol, cysylltiadau rhynglywodraethol a memoranda cydsyniad deddfwriaethol a osodir gan Lywodraeth Cymru ynghylch Biliau'r DU sy'n gwneud darpariaeth at unrhyw ddiben o fewn cymhwysedd deddfwriaethol y Senedd.

## Y cefndir

### Ein tystiolaeth

- Bydd ein cyflwyniad yn canolbwyntio ar ddwy o'r themâu yn eich galwad am dystiolaeth:
  - I ba raddau y mae Adolygiad Dunlop o Allu'r Undeb wedi'i roi ar waith a beth sydd i'w wneud o hyd?
  - Beth yw barn y sefydliadau datganoledig am allu datganoli yn Whitehall a pha ddull y maent yn ei ddefnyddio i adeiladu'r wybodaeth a'r gallu cyfatebol ar ran Gweinidogion a swyddogion eu gweinyddiaethau eu hunain?

### Adroddiad y Pumed Cynulliad

- Cynhaliodd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn y Pumed Cynulliad ymchwiliad ynghylch llywodraethiant yn y DU ar ôl gadael yr Undeb Ewropeaidd, gan gyhoeddi



adroddiad gyda naw argymhelliad ym mis Chwefror 2018.<sup>1</sup> Edrychodd yr ymchwiliad ar sut y dylai Llywodraeth Cymru a Llywodraeth y DU gydweithio, gan gynnwys gwaith helaeth ar ddeall datganoli yn Whitehall. Canfu fod gwybodaeth a dealltwriaeth o ddatganoli yn Whitehall yn wael.

## Adolygiad Dunlop a chysylltiadau rhynglywodraethol

### Sylwadau cyffredinol

**3.** Mae'r berthynas rhwng llywodraethau wedi bod yn bwysig ers dechrau datganoli ond mae wedi dod yn fwy amlwg ers i'r DU adael yr UE. Nododd adroddiad y Pwyllgor a'n rhagflaenodd yn 2018 fod angen gwelliant sylweddol yn y maes hwn. Argymhellodd fod Llywodraeth Cymru yn ymrwmo i gytundeb gyda'r Pwyllgor, a hynny er mwyn cefnogi'r gwaith craffu ar gysylltiadau rhynglywodraethol. Derbyniwyd y Cytundeb Cysylltiadau Rhyng-sefydliadol cyntaf ym mis Ionawr 2019. Derbyniodd y Pwyllgor Gytundeb newydd wedi'i ddiweddarau ar gyfer y Chweched Senedd ym mis Tachwedd 2021<sup>2</sup>, a chafodd ei drafod yn y Cyfarfod Llawn ar 15 Rhagfyr 2021.<sup>3</sup> Yn unol â'r Cytundeb, ar 18 Gorffennaf 2023 cyhoeddodd Llywodraeth Cymru ei hadroddiad ar gysylltiadau rhynglywodraethol rhwng 2021 a 2023.<sup>4</sup>

**4.** Roedd cyhoeddi Adolygiad Dunlop yn gam cadarnhaol yn y cyfeiriad cywir tuag at wella cysylltiadau rhynglywodraethol. Fodd bynnag, ein hasesiad yw nad yw hyn eto wedi arwain at y math o newid sylweddol yr hoffem fod wedi'i weld, yn anad dim o'n safbwynt ni fel Pwyllgor seneddol sy'n ceisio craffu ar sut mae llywodraethau'n cydweithio, yn enwedig ar faterion deddfwriaethol.

**5.** Er y gallai fod gwelliannau wedi bod yn adrannau unigol Whitehall, at ei gilydd nid ydym yn credu bod digon o gynnydd wedi bod yn gyffredinol i wella'r wybodaeth a'r ddealltwriaeth o ddatganoli ar draws Whitehall, ac mae'r ddwy agwedd yn parhau i fod yn anghyson.

**6.** Er ein bod wedi clywed Gweinidogion yn Llywodraeth Cymru yn gwneud sylwadau cadarnhaol am ymgysylltu â Gweinidogion y DU, rydym hefyd wedi clywed rhwystredigaeth gan

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<sup>1</sup> Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, [Llywodraethiant yn y DU ar ôl gadael yr Undeb Ewropeaidd](#), Chwefror 2018 a'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, [Llywodraethiant yn y DU ar ôl gadael yr Undeb Ewropeaidd: crynodeb o'r dystiolaeth](#), Mai 2018

<sup>2</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [Cytundeb Cysylltiadau Rhyng-sefydliadol rhwng Senedd Cymru a Llywodraeth Cymru](#), Tachwedd 2021

<sup>3</sup> [Y Cyfarfod Llawn](#), 15 Rhagfyr 2021, Cofnod y Trafodion [249-278]

<sup>4</sup> Llywodraeth Cymru, [Cytundeb cysylltiadau rhyng-sefydliadol rhwng y Senedd a Llywodraeth Cymru: adroddiad ar gysylltiadau rhynglywodraethol ar gyfer y cyfnod 2021 i 2023 Adroddiad trosolwg ar y cyfnod rhwng Ebrill 2021 a Mawrth 2023](#), 18 Gorffennaf 2023

Lywodraeth Cymru ar sawl achlysur am yr anawsterau y maent wedi dod ar eu traws. Mae hyn yn cynnwys cael eu hysbysu'n hwyr am gyfarfodydd rhyngweinidogol,<sup>5</sup> diffyg presenoldeb gan yr Ysgrifennydd Gwladol perthnasol mewn cyfarfodydd rhyngweinidogol<sup>6</sup> a rhwystredigaeth mewn perthynas â Biliau'r DU sy'n cynnig darpariaethau mewn meysydd datganoledig (gweler ystyriaeth ddiweddarach yn y dystiolaeth hon).

**7.** Mae adroddiadau chwarterol ar gysylltiadau rhynglywodraethol gan Lywodraeth y DU yn ganolog i Whitehall, ac weithiau'n drysu rhwng cyfarfodydd rhynglywodraethol ffurfiol ac anffurfiol. Nid yw'r ysgrifenyddiaeth sefydlog annibynnol a gyhoeddwyd o ganlyniad i Adolygiad o Gysylltiadau Rhynglywodraethol 2022 wedi'i sefydlu eto, er gwaethaf ymrwymadau gan yr Ysgrifennydd Gwladol y byddai hyn wedi digwydd cyn toriad yr haf.<sup>7</sup> Ysgrifenyddiaeth rynglywodraethol annibynnol oedd un o argymhellion Adolygiad Dunlop, ac mae'r broses datrys anghydfodau newydd yn dibynnu ar ei chreu.

**8.** Mae mwy na hanner y Grwpiau Rhyngweinidogol a restrwyd yn yr Adolygiad o Gysylltiadau Rhynglywodraethol bellach wedi'u sefydlu. Ceir amrywiaeth rhwng y Grwpiau Rhyngweinidogol o ran pa mor aml y cynhelir cyfarfodydd a manylion y cyfathrebiadau. Mae rhai grwpiau, megis y Grŵp Rhyngweinidogol ar gyfer yr Amgylchedd, Bwyd a Materion Gwledig a'r Grŵp Rhyngweinidogol ar gyfer Busnes a Diwydiant, yn cwrdd yn rheolaidd, ond mae cyfathrebiadau'r cyntaf yn llawer manylach na rhai'r ail. Dim ond unwaith y mae eraill wedi cwrdd, er enghraifft y Grŵp Rhyngweinidogol ar gyfer Diogelwch ac Ymfudo a'r Grŵp Rhyngweinidogol ar gyfer Twristiaeth. Ymddengys nad oes Grŵp Rhyngweinidogol mewn rhai meysydd polisi, er enghraifft diwylliant.

### **Cysylltiadau rhynglywodraethol ar Filiau'r DU sy'n gwneud darpariaeth mewn meysydd datganoledig**

**9.** Tynnodd ein hadroddiad blynyddol 2021/22<sup>8</sup> sylw at y cynnydd sylweddol yn y defnydd o Filiau'r DU i gynnig deddfu mewn meysydd datganoledig, ein pryderon gyda'r dull hwn, a'n barn bod diffyg democrataidd wedi dod i'r amlwg. Mae cyfnod 2022/23 wedi gweld y duedd anffodus hon yn parhau. Mae ein Pwyllgor, a'r Senedd yn ehangach, yn treulio cryn dipyn o

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<sup>5</sup> Llywodraeth Cymru, [Datganiad ysgrifenedig: Cyfarfod y Grŵp Rhyngweinidogol ar gyfer Cysylltiadau rhwng y DU a'r UE](#), 17 Chwefror 2022

<sup>6</sup> [Llythyr gan y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd a'r Gweinidog Newid Hinsawdd](#), 27 Ebrill 2023

<sup>7</sup> Pwyllgor Ffyniant Bro, Tai a Chymunedau Tŷ'r Cyffredin, [Tystiolaeth lafar: Cysylltiadau Rhynglywodraethol](#), 27 Mawrth 2023

<sup>8</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [Adroddiad Blynyddol 2021/22](#), Hydref 2022, paragraffau 20-32 a 48-59

amser yn craffu ar femoranda cydsyniad deddfwriaethol ar gyfer Biliau'r DU heb unrhyw allu gwirioneddol i ddylanwadu ar y ddeddfwriaeth sylfaenol sy'n cael ei gwneud mewn meysydd datganoledig. O ganlyniad, rydym yn credu bod swyddogaethau'r Senedd yn cael eu hosgoi'n rhy aml.

**10.** Rydym yn cydnabod bod gan y Senedd benderfyniad i'w wneud ynghylch rhoi neu wrthod cydsyniad deddfwriaethol. Fodd bynnag, nid yw penderfyniad deuaidd – ie neu na – o ran cynnwys darpariaethau datganoledig mewn Bil gan y DU yn gwneud y tro yn lle craffu fesul llinell, y gallu i gyflwyno gwelliannau, clywed tystiolaeth a cheisio gwelliannau i Filiau a gyflwynir i'r Senedd.

**11.** Cafwyd sawl enghraifft hefyd lle dywedodd Llywodraeth Cymru ei bod wedi gweld un o Filiau'r DU (yn gwneud darpariaeth mewn meysydd datganoledig) yn hwyr cyn ei gyhoeddi, er enghraifft mewn perthynas â Bil Protocol Gogledd Iwerddon,<sup>9</sup> y Bil Ffyniant Bro ac Adfywio<sup>10</sup> a Bil Cyfraith yr UE a Ddargedwir (Dirymu a Diwygio).<sup>11</sup>

**12.** Bu adegau hefyd pan na fu modd i Lywodraeth Cymru a Llywodraeth y DU ddod i gytundeb ar rai darpariaethau, gan arwain at gyflwyno mwy nag un cynnig cydsyniad. Er enghraifft, mewn perthynas â Bil yr Heddlu, Troseddu, Dedfrydu a'r Llysoedd, ni ddaethpwyd i gytundeb rhwng y llywodraethau ar rai darpariaethau; arweiniodd hyn at Lywodraeth Cymru yn cyflwyno dau gynnig yn gofyn am gydsyniad mewn perthynas â darpariaethau penodol a restrwyd ym mhob cynnig. Digwyddodd hyn ar gyfer dadleuon ar 18 Ionawr 2022 ac 1 Mawrth 2022, ac ar y ddau achlysur, dim ond un o'r cynigion a dderbyniwyd gan y Senedd.<sup>12</sup> Pasiodd Senedd y DU y Bil wedi hynny, gan gynnwys y darpariaethau hynny y gwrthododd y Senedd roi cydsyniad iddynt.

**13.** Ym mis Mawrth 2023, dywedodd Llywodraeth Cymru wrthym mai dim ond o dan yr amgylchiadau mwyaf eithriadol y byddai disgwyl gweld anghydfodau'n digwydd, ac mai hanfod llawer o'r fframwaith yw osgoi anghydfodau a dod i gytundebau, ond bod y broses datrys anghydfod yn gam sylweddol ymlaen.<sup>13</sup> Wrth adrodd wedyn ar femoranda cydsyniad deddfwriaethol, rydym wedi argymhell weithiau bod Llywodraeth Cymru yn egluro'r camau y mae wedi'u cymryd i ddatrys gwahaniaethau barn lle maent yn bodoli gyda Llywodraeth y DU gan ddefnyddio'r prosesau datrys anghydfodau rhynglywodraethol newydd. Fodd bynnag, yn ôl

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<sup>9</sup> [Llythyr gan Weinidog yr Economi](#), 27 Mehefin 2022

<sup>10</sup> [Llywodraeth Cymru, Memorandwm Cydsyniad Deddfwriaethol Diwygiedig y Bil Ffyniant Bro ac Adfywio](#), 25 Tachwedd 2022, paragraff 3

<sup>11</sup> [Llythyr gan y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad at y Llywydd](#), 5 Hydref 2022

<sup>12</sup> [Cydsyniad Deddfwriaethol: Bil yr Heddlu, Troseddu, Dedfrydu a'r Llysoedd](#)

<sup>13</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [14 Mawrth 2023](#), Cofnod y Trafodion [17-18, 96]

ei hymatebion, mae'n ymddangos bod Llywodraeth Cymru yn gyndyn i ymgysylltu â'r broses neu ei defnyddio.<sup>14</sup>

**14.** Mewn tystiolaeth i ni ar 10 Gorffennaf 2023, awgrymodd Mick Antoniw AS, y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad, nad oedd proses datrys anghydfod yr Adolygiad o Gysylltiadau Rhynglywodraethol yn addas ar gyfer datrys materion yn ymwneud â Biliau unigol y DU oherwydd yr amserlenni ar gyfer craffu arnynt a'u hynt drwy Senedd y DU.<sup>15</sup> Fe wnaethom ni ofyn am eglurhad pellach ar y pwynt hwn<sup>16</sup> ac yn ei ymateb dywedodd wrthym:

*"Mae ffocws cychwynnol yr Adolygiad o Gysylltiadau Rhynglywodraethol ar osgoi anghydfodau. Rydym yn gweithredu yn yr ysbryd hwnnw. Pan fo gennym bryderon am ddarn penodol o deddfwriaeth y DU, rydym yn ceisio gweithio gyda Llywodraeth y DU yn y lle cyntaf i sicrhau bod ein safbwyntiau'n cael eu deall, a'r nod yw ei chael i gymryd camau priodol i ddatrys y mater.*

*Nid yw'n wir na ellir defnyddio'r prosesau anghydfod yn yr Adolygiad o Gysylltiadau Rhynglywodraethol mewn perthynas â Biliau unigol y DU; fodd bynnag, byddai'r amserlennu cysylltiedig yn debygol o fod yn gymhleth. Weithiau gall fod yn hwyr iawn yn hynt Bil cyn iddi ddod yn amlwg na ellir dod i gytundeb ar lefel rynglywodraethol, ac er y gellir cynnal y prosesau anghydfod yn gyflym, nid ydynt yn diystyru gallu Senedd y DU i gynnal ac amserlennu busnes deddfwriaeth."*<sup>17</sup>

**15.** Hoffem hefyd dynnu eich sylw at ein trafodaeth ddiweddar o femorandwm cydsyniad deddfwriaethol yn ymwneud â'r Bil Ynni. Ar 10 Gorffennaf 2023, buom yn cymryd tystiolaeth gan Julie James AS, y Gweinidog Newid Hinsawdd, ynghylch y memorandwm.<sup>18</sup> Mynegodd bryder ynghylch y diffyg ymgysylltu â Llywodraeth y DU (gweler er enghraifft baragraffau 20–21 y trawsgrifiad). Fe wnaethom ni ysgrifennu at Lywodraeth y DU ar y mater hwn<sup>19</sup> a chael ymateb sydd, mewn manau, yn gwrthod y datganiadau a wnaed gan y Gweinidog Newid Hinsawdd.<sup>20</sup>

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<sup>14</sup> Er enghraifft, gweler yr ohebiaeth gan Lywodraeth Cymru ynghylch Bil Banc Seilwaith y DU ([21 Tachwedd 2022](#)) a'r Bil Streiciau (Lefelau Gwasanaeth Gofynnol) ([24 Ebrill 2023](#))

<sup>15</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [10 Gorffennaf 2023](#), Cofnod y Trafodion [161-165]

<sup>16</sup> [Llythyr at y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad](#), 24 Gorffennaf 2023, Cwestiwn 2

<sup>17</sup> [Llythyr gan y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad](#), 4 Medi 2023, ymateb i gwestiwn 2

<sup>18</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [10 Gorffennaf 2023](#), Cofnod y Trafodion [3-68]

<sup>19</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [Llythyr at Andrew Bowie AS, Is-ysgrifennydd Gwladol Seneddol dros Ddiogelwch Ynni a Sero Net](#), 12 Gorffennaf 2023

<sup>20</sup> Yr Adran Diogelwch Ynni a Sero Net, [Llythyr gan Andrew Bowie AS, Gweinidog dros Niwclear a Rhwydweithiau](#), 24 Gorffennaf 2023

Cyhoeddwyd ein hadroddiad ar 12 Medi 2023.<sup>21</sup> Yn ystod y ddadl ar 12 Medi, dywedodd y Gweinidog:

*"Llywydd, yn anffodus, dyma Lywodraeth y DU nad yw eisiau gweithio gyda llywodraethau datganoledig, ac yn lle hynny mae'n credu bod prosesau ymgynghori a hysbysu yn fesurau diogelu boddhaol o'n cyfansoddiad. Rwy'n anghytuno'n sylfaenol â'r safbwynt hwnnw. Ni allwn fod yn gliriach fy mod eisiau gweithio ar sail ceisio dod i gytundeb i ddarparu rheoleiddio trawsffiniol priodol sydd ei angen ar ein diwydiant a'n dinasyddion i'n helpu i gyflawni sero net. Rwyf wedi dadlau'r achos i Lywodraeth y DU weithio gyda ni. Rwyf wedi gofyn i'r Bil gael ei oedi fel y gallwn gytuno ar ddatrysiaid sy'n parchu'r Senedd hon a'n cyfrifoldeb datganoledig cyfreithlon.*

*Yn olaf, rwyf wedi atgoffa Llywodraeth y DU o'u hymrwymiad datganedig eu hunain i gonfensiwn Sewel ac na fyddai'n briodol o dan unrhyw amgylchiadau i basio'r Bil hwn heb gydsyniad y Senedd."<sup>22</sup>*

**16.** Yn ddiweddarach yn y ddadl, dywedodd y Gweinidog hefyd:

*"Doedd gennym ni ddim testun llawn y Bil cyn iddo gael ei gyflwyno. Cawsom ddarnau bach a rannwyd ar wahân, ond rhannwyd y testun llawn, sef 346 o dudalennau, y noson cyn iddo gael ei gyhoeddi. Ac mae bellach yn ddrwg-enwog yn Llywodraeth Cymru eich bod yn cael eich galw i siarad â Gweinidog Llywodraeth y DU am sgwrs 15 munud a rhaid i hynny ddigwydd am 6.30 p.m. ar noson benodol oherwydd eu bod yn amlwg ar fin cyhoeddi rhywbeth y bore wedyn ac maen nhw wedi anghofio dweud wrthy ch chi amdano."<sup>23</sup>*

**17.** Fodd bynnag, ar yr un diwrnod, yn ystod dadl ar gydsyniad y Bil Ardrethu Annomestig,<sup>24</sup> dywedodd Rebecca Evans AS, y Gweinidog Cyllid a Llywodraeth Leol:

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<sup>21</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [Memoranda Cydsyniad Deddfwriaethol Llywodraeth Cymru ar y Bil Ynni](#), Medi 2023

<sup>22</sup> [Y Cyfarfod Llawn](#), 12 Medi 2023, Cofnod y Trafodion [330-331]

<sup>23</sup> [Y Cyfarfod Llawn](#), 12 Medi 2023, Cofnod y Trafodion [374]

<sup>24</sup> Dylid nodi mai barn y Pwyllgor ar y Bil hwn oedd y dylai Llywodraeth Cymru fod wedi cyflwyno ei Bil ei hun i Senedd Cymru, a deddfu ochr yn ochr, yn hytrach na defnyddio Bil y DU sy'n mynd drwy Senedd y DU; y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [Memorandwm Cydsyniad Deddfwriaethol Llywodraeth Cymru ar y Bil Ardrethu Annomestig](#), Mehefin 2023



*"Ac yng ngoleuni'r ddadl flaenorol, rwy'n credu, dylwn i gydnabod bod y profiad gyda'r darn penodol hwn o ddeddfwriaeth wedi bod yn un cadarnhaol iawn o ran y cydweithio rhwng Llywodraeth Cymru a Llywodraeth y DU. Felly, roeddwn i eisiau rhoi hynny ar y cofnod, i ddangos y gellir ei wneud, ac rwy'n credu yn yr achos hwn, mae wedi bod yn brofiad cadarnhaol iawn, rwy'n gobeithio ar y ddwy ochr."*<sup>25</sup>

**18.** Mae'r ddwy enghraifft olaf hyn yn dangos darlun cymysg o ran ymgysylltu a hefyd bod cysylltiadau rhynglywodraethol yn amrywio yn dibynnu ar yr adrannau Whitehall dan sylw.

### **Ein hymgysylltiad â Gweinidogion y DU mewn perthynas â Biliau'r DU**

**19.** Rydym hefyd wedi mynegi ein pryderon ein hunain yn uniongyrchol i Weinidogion Llywodraeth y DU ynghylch cysylltiadau rhynglywodraethol gwael, ac wedi ceisio'u safbwynt ar yr hyn yr ydym yn ei ystyried yn ddefnydd gormodol o Filiau'r DU i wneud darpariaeth mewn meysydd datganoledig. Er enghraifft, fe wnaethom ysgrifennu at y Gwir Anrhydeddus Greg Clark AS, yr Ysgrifennydd Gwladol ar y pryd dros Ffyniant Bro, Tai a Chymunedau, ar 20 Gorffennaf 2022<sup>26</sup>, a chawsom ymateb ar 30 Awst 2022,<sup>27</sup> a oedd, er ei fod yn gymharol gadarnhaol, yn methu mynd i'r afael â materion yn fanwl. Gwnaeth yr ymateb y sylw a ganlyn hefyd:

*"This engagement is also important to identify where a UK government bill can include provisions within a devolved legislature's competence and **enable timely pragmatic solutions to policy challenges to deliver for people of Wales freeing up devolved legislatures time whilst respecting their legislative competence via the legislative consent process.**"*

**20.** Nid ydym yn rhannu'r teimlad a amlygir mewn print trwm (cafodd hyn ei gynnwys eto mewn gohebiaeth ddilynol gyda'i olynydd, y Gwir Anrhydeddus Michael Gove AS, y cyfeiriwn ati isod) gan nad mater i Lywodraeth y DU yw awgrymu sut mae'r Senedd yn defnyddio'i hamser na'r hyn y dylai ddeddfu yn ei gylch. Efallai bod y testun hwn yn amlygu diffyg dealltwriaeth ynghylch egwyddorion datganoli. Byddem hefyd yn ychwanegu, er gwaethaf y sylwadau cadarnhaol am y broses yn y llythyr gan yr Ysgrifennydd Gwladol, fod ein hadroddiad ar femorandwm cydsyniad deddfwriaethol Llywodraeth Cymru ar y Bil Ffyniant Bro ac Adfywio

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<sup>25</sup> [Y Cyfarfod Llawn](#), 12 Medi 2023, Cofnod y Trafodion [409]

<sup>26</sup> [Llythyr at yr Ysgrifennydd Gwladol dros Ffyniant Bro, Tai a Chymunedau](#), 20 Gorffennaf 2022

<sup>27</sup> [Llythyr gan yr Ysgrifennydd Gwladol dros Ffyniant Bro, Tai a Chymunedau](#), 30 Awst 2022

wedi tynnu sylw at y diffyg ymgysylltu gan Lywodraeth y DU ar y Bil hwnnw (yr ydym hefyd yn tynnu sylw ato ym mharagraff 11 uchod).<sup>28</sup>

**21.** Yn dilyn ein gohebiaeth â'r Gwir Anrhydeddus Greg Clark AS, fe wnaethom ysgrifennu at y Gwir Anrhydeddus Michael Gove AS yn gofyn a oedd y canllawiau a ddarparwyd ar ymgysylltu ar Filiau'r DU yn ffurfiol eu natur (yn debyg i ganllawiau ar ddatganoli er enghraifft).<sup>29</sup> Yn ei ymateb,<sup>30</sup> dywedodd wrthym fod canllawiau a chymorth wedyn yn cael eu haddasu i amgylchiadau penodol pob Bil, sy'n awgrymu nad oes proses ffurfiol ar waith ar draws Whitehall.

**22.** O ganlyniad i'n gohebiaeth â'r Gwir Anrhydeddus Michael Gove, cafodd ei wahodd gan y Pwyllgor i roi tystiolaeth i ni ynghylch cysylltiadau rhynglywodraethol. Fodd bynnag, rydym yn dal i aros am ymateb ffurfiol tua 7 mis yn ddiweddarach.<sup>31</sup>

### **Cysylltiadau rhynglywodraethol ar ôl gadael yr Undeb Ewropeaidd**

**23.** Roedd ymadawiad y DU â'r UE yn golygu bod angen datblygu strwythurau domestig newydd i reoli'r cysylltiadau rhwng y llywodraethau ym meysydd y gyfraith, polisi a chysylltiadau rhyngwladol a oedd yn arfer cael eu llywodraethu neu eu cydgysylltu gan yr UE. Cytunwyd ar rai trefniadau newydd i wneud y gwaith hwn o ganlyniad i'r Adolygiad o Gysylltiadau Rhynglywodraethol.

**24.** Yn hanesyddol, roedd cydweithredu rhynglywodraethol mewn perthynas â'r UE, a chysylltiadau rhyngwladol, mewn dau goncordat fel rhan o Femorandwm Cyd-ddealltwriaeth ehangach y cytunwyd arno yn 2013 rhwng Llywodraeth y DU a'r llywodraethau datganoledig.<sup>32</sup> Cynlluniwyd Concordat Cysylltiadau Rhyngwladol fel rhan o'r Adolygiad o Gysylltiadau Rhynglywodraethol, ond ni chytunwyd arno eto. O'r herwydd, ni allwn wneud sylw ynghylch i ba raddau y byddai'n disodli'r trefniadau sydd ym Memorandwm Cyd-ddealltwriaeth 2013 i adlewyrchu'r cyd-destun ers gadael yr Undeb Ewropeaidd. Mae'r mater hwn yn arbennig o berthnasol i drafodaeth eich Pwyllgor ynghylch yr hyn sydd eto i'w ddatrys.

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<sup>28</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [Memoranda Cydsyniad Deddfwriaethol Llywodraeth Cymru ar y Bil Ffyniant Bro ac Adfywio, Chwefror 2023](#), paragraff 47

<sup>29</sup> [Llythyr at yr Ysgrifennydd Gwladol dros Ffyniant Bro, Tai a Chymunedau a'r Gweinidog dros Gysylltiadau Rhynglywodraethol](#), 4 Tachwedd 2022

<sup>30</sup> [Llythyr gan yr Ysgrifennydd Gwladol dros Ffyniant Bro, Tai a Chymunedau a'r Gweinidog dros Gysylltiadau Rhynglywodraethol](#), 12 Ionawr 2023

<sup>31</sup> [Llythyr at yr Ysgrifennydd Gwladol dros Ffyniant Bro, Tai a Chymunedau a'r Gweinidog dros Gysylltiadau Rhynglywodraethol](#), 14 Mehefin 2023 (llythyr diweddaraf)

<sup>32</sup> Llywodraeth y DU, [Devolution: Memorandum of Understanding and Supplementary Agreements](#), Hydref 2013

**25.** Mae Fframweithiau Cyffredin wedi dod i'r amlwg fel mecanwaith allweddol ar gyfer datblygu a chydgyssylltu polisi a deddfwriaeth ar draws Llywodraethau yn y DU ar ôl gadael yr Undeb Ewropeaidd. Mewn ymateb i'n hadroddiad diweddar ar Fframweithiau Cyffredin<sup>33</sup>, dywedodd y Cwnsler Cyffredinol a'r Gweinidog dros y Cyfansoddiad fod potensial i'r fframweithiau fod yn "n fecanweithiau llywodraethu parhaus, hyblyg a chynyddol arwyddocaol ar gyfer y meysydd polisi a lywodraethwyd yn flaenorol gan gyfraith yr UE"<sup>34</sup>. Rydym yn nodi bod y fframweithiau cyffredin, ar y cyfan, wedi bod yn enghraifft gadarnhaol o weithio rhynglywodraethol rhwng swyddogion a Gweinidogion, gydag enghreifftiau cadarnhaol o wneud penderfyniadau ar y cyd. Er enghraifft, mae adroddiad Llywodraeth Cymru i'r Senedd ar gysylltiadau rhynglywodraethol rhwng 2021 a 2023 yn nodi gwaith ar y Fframwaith Cyffredin Caffael Cyhoeddus fel strwythur sy'n gweithio'n dda<sup>35</sup>. Fodd bynnag, yn fwy diweddar, mae Llywodraeth Cymru hefyd wedi rhybuddio am enghreifftiau o adrannau Llywodraeth y DU yn gwneud penderfyniadau y tu allan i strwythurau'r Fframweithiau Cyffredin, felly'n osgoi'r prosesau ar gyfer cydgysylltu oddi mewn iddynt. Nodwyd hyn yn arbennig mewn perthynas â fframweithiau ym meysydd yr amgylchedd, bwyd a materion gwledig. Gobeithiwn mai enghreifftiau prin yw'r rhain a bod modd gwireddu potensial llawn y Fframweithiau Cyffredin i wella ymwybyddiaeth o ddatganoli a chydweithio rhwng llywodraethau.

**26.** Bydd yr ymrwymiad hwn i holl adrannau Llywodraeth y DU ddefnyddio proses y fframweithiau cyffredin yn bwysicach fyth yng nghyd-destun newidiadau i'r corff o gyfraith yr UE a ddargedwir sy'n sail i feysydd polisi a lywodraethir gan y fframweithiau o dan *Ddeddf Cyfraith yr UE a Ddargedwir* (Dirymu a Diwygio) 2023. Er enghraifft, rydym yn ymwybodol<sup>36</sup> bod gwaith wedi'i wneud drwy'r Fframwaith Cyffredin Nwyon wedi'u Fflworeiddio ar ddatblygu Rheoliadau Nwyon Tŷ Gwydr wedi'u Fflworeiddio (Diwygio) 2023 sy'n cael eu gwneud gan ddefnyddio pwerau yn Neddf Cyfraith yr UE a Ddargedwir. Bydd gwaith o'r fath yn bwysig o ystyried y diffyg mecanwaith cydsynio ffurfiol yn Neddf Cyfraith yr UE a Ddargedwir ar gyfer amgylchiadau pan fo Gweinidog y DU yn dymuno arfer pŵer dirprwyedig mewn maes datganoledig. Hyd yn hyn, ceir diffyg eglurder o hyd ynghylch unrhyw broses gydsynio anffurfiol a allai fod wedi'i chytuno rhwng Llywodraeth Cymru a Llywodraeth y DU<sup>37</sup>.

**27.** Mae gwaith craffu'r Pwyllgor ar gytundebau rhyngwladol wedi rhoi gwybodaeth newydd am ffyrdd rhynglywodraethol o weithio ar rwymedigaethau rhyngwladol. Mae Llywodraeth

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<sup>33</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, Fframweithiau Cyffredin, Mai 2023

<sup>34</sup> Llythyr gan y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad, 22 Mehefin 2023

<sup>35</sup> Llywodraeth Cymru, **Cytundeb cysylltiadau rhyngsefydliadol rhwng y Senedd a Llywodraeth Cymru: adroddiad ar gysylltiadau rhynglywodraethol ar gyfer y cyfnod 2021 i 2023**, 18 Gorffennaf 2023

<sup>36</sup> Llythyr gan y Gweinidog Newid Hinsawdd, 1 Medi 2023

<sup>37</sup> Llythyr gan y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad, 12 Medi 2023, ymateb i gwestiwn 2

Cymru wedi ein hysbysu am lefel ei chyfranogiad yn y gwaith o negodi a gweithredu cytundebau rhyngwladol; a oedd ganddi wybodaeth flaenorol bod cytundeb wedi'i gwblhau; lle mae Memoranda Cyd-ddealltwriaeth ar waith rhwng y pedair llywodraeth ar gyfer rhai categorïau o gytundebau rhyngwladol; y berthynas rhwng cytundebau rhyngwladol lluosog a mecanweithiau domestig; sut mae Llywodraeth Cymru yn ymdrin â'i rhwymedigaethau rhyngwladol; a lle mae ganddi farn wahanol i Lywodraeth y DU ar gymhwysedd deddfwriaethol.

**28.** Rydym wedi nodi dull amrywiol ar draws adrannau Whitehall o ymgysylltu â'r llywodraethau datganoledig ar gytundebau sydd o fewn meysydd polisi datganoledig neu sydd â goblygiadau sylweddol iddynt. Cefnogir y farn hon gan Lywodraeth Cymru, a ddywedodd mewn ymateb i un arall o'ch ymchwiliadau ym mis Chwefror 2023:

*"...it is not possible to say with certainty whether the lead UK Government department always notifies relevant Welsh Government departments, and if so at what stage it does so. This is something that we propose to consider further, together with the UK Government and the other Devolved Governments, when the overall 'Devolution Memorandum of Understanding and Supplementary Agreements' document is reviewed in light of the Inter-Governmental Relations Review outcome."<sup>38</sup>*

**29.** Enghraifft gyffredinol yw ei bod yn ymddangos bod ymgysylltu â'r llywodraethau datganoledig ynghylch negodiadau masnach rhyngwladol wedi bod yn gadarnhaol ar y cyfan, hyd yn oed pan nad yw'n bosibl cytuno ar safbwyntiau a blaenoriaethau negodi terfynol. I'r gwrthwyneb, mae ymgysylltu ar gytundebau rhyngwladol nad ydynt yn rhai masnach yn fwy amrywiol, ac, yn anffodus, mae ein hadroddiadau craffu<sup>39</sup> yn aml yn nodi bod gwybodaeth ar goll neu'n annigonol ynghylch ymgysylltiad Llywodraeth y DU â'r llywodraethau datganoledig.

**30.** Er gwaethaf hyn, rydym wedi canfod enghreifftiau o arfer gorau<sup>40</sup> ac mae Llywodraeth y DU wedi cydnabod buddiannau'r llywodraethau datganoledig mewn cytundebau rhyngwladol, gan ddisgrifio trafodaethau rhynglywodraethol fel rhai hollbwysig ar gyfer y dyfodol.<sup>41</sup>

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<sup>38</sup> Y Pwyllgor Gweinyddiaeth Gyhoeddus a Materion Cyfansoddiadol, yr ymchwiliad Craffu ar Gytuniadau Rhyngwladol a chytundebau rhyngwladol eraill yn yr unfed ganrif ar hugain, [Tystiolaeth ysgrifenedig gan Lywodraeth Cymru](#) (SIT 27)

<sup>39</sup> [Cytundebau Rhyngwladol](#), tudalen y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

<sup>40</sup> Y Pwyllgor Gweinyddiaeth Gyhoeddus a Materion Cyfansoddiadol, yr ymchwiliad Craffu ar Gytuniadau Rhyngwladol a chytundebau rhyngwladol eraill yn yr unfed ganrif ar hugain, [Tystiolaeth ysgrifenedig gan y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad](#) (SIT 22)

<sup>41</sup> Llywodraeth y DU, [Ymateb y Llywodraeth i adroddiad Is-bwyllgor Cytundebau Rhyngwladol Tŷ'r Arglwyddi: Treaty Scrutiny, Working Practices](#)

## Ffyrdd o wella dealltwriaeth o ddatganoli

**31.** Rydym yn cydnabod y bydd llywodraethau'n anghytuno o bryd i'w gilydd. Fodd bynnag, yn ein barn ni, po orau yw'r ddealltwriaeth o ddatganoli a'r hyn y mae'n ei olygu'n ymarferol, y mwyaf tebygol yw hi y bydd anghytuno'n digwydd yn llai aml, a'i fod yn cael ei ddatrys yn gynt pan fydd yn digwydd. Mae'n werth cofio hefyd nad yw datganoli'n aros yn ei unfan a bod angen i adrannau Whitehall gadw i fyny â newidiadau i'r setliad datganoli. Rydym hefyd yn cydnabod ei bod yn debygol y bydd gan rai adrannau well dealltwriaeth o ddatganoli nag eraill, er enghraifft mewn adrannau lle bu ymgysylltu o ganlyniad i'r angen i drafod materion polisi'r UE tra oedd y DU yn Aelod-wladwriaeth.

**32.** Credwn y gellid gwella dealltwriaeth o ddatganoli yn y ffyrdd a nodir isod:

### Senedd y DU yn mabwysiadu safbwynt pendant ar Gonsensiwn Sewel

**33.** Wrth roi tystiolaeth i ni ar 10 Gorffennaf 2023, trafododd y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad ei bryderon ynghylch Gonsensiwn Sewel.<sup>42</sup> Yn benodol, nododd fod angen statws cyfansoddiadol llawer cryfach i Sewel, gan ddweud hefyd yng nghyd-destun sut i ddatrys anghydfodau:

*"The crux of the problem with Sewel is either the lack of codification of Sewel—the lack of clarity as to what it means, and the diverse ways in which it is treated—. The fact that we don't have a common position any more, I think, in terms of what Sewel amounts to, is really the core of the problem. Now, maybe that would be the mechanism, by taking all the disputed legislation we've had, collectively, and trying to use the disputes process to try and resolve that. But, can a disputes process resolve what is, ultimately, a political process of a constitutional disagreement that doesn't have a real justiciable status?"<sup>43</sup>*

**34.** Cyflwynodd y Pwyllgor a'n rhagflaenodd yn y Bumed Senedd dystiolaeth i Bwyllgor Gweithdrefn Tŷ'r Cyffredin i lywio ei ymchwiliad i weithdrefn Tŷ'r Cyffredin a'r cyfansoddiad tiriogaethol. Yn y dystiolaeth honno, dywedodd:

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<sup>42</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [10 Gorffennaf 2023](#), Cofnod y Trafodion [161-189 a 240-250]

<sup>43</sup> Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, [10 Gorffennaf 2023](#), Cofnod y Trafodion [164]

*"Efallai nad yw'n syndod felly bod Confensiwn sy'n seiliedig ar un cyfraniad i ddadl seneddol wedi methu â ffurfio sail foddhaol, hirdymor ar gyfer y berthynas rhwng y deddfwrfeydd datganoledig a Senedd y DU.*

*Credwn felly y dylai Senedd y DU nodi ei chyfrifoldebau a'i dealltwriaeth yn glir o ran cymhwyso Confensiwn Sewel a'i chymhwysiad ymarferol, gan gynnwys ystyr 'ddim fel arfer'. (...)*

*Yn ein barn ni, rhaid cael proses fwy cynhwysfawr a thryloyw sy'n cynnwys mecanwaith ar gyfer sicrhau bod safbwyntiau'r Senedd (a Llywodraeth Cymru) wedi'u nodi'n glir ac ar bwytiau hysbys ym mhroses deddfwriaethol Senedd y DU. Nid ydym o'r farn y byddai'n briodol i'r mecanwaith hwn ddibynnu ar ddehongliad Llywodraeth y DU o farn y Senedd neu Lywodraeth Cymru."<sup>44</sup>*

**35.** Credwn fod angen ateb y pwyntiau a wnaed gan y Pwyllgor a'n rhagflaenodd, gan eu bod yn berthnasol o hyd.

**36.** Weithiau, ar ddechrau tymor yr hydref pan fydd Senedd y DU yn mynd i mewn i'w thoriad cynadleddau, gall y ffaith nad yw amserlenni seneddol yn alinio olygu na all pwyllgorau Senedd Cymru drafod ac adrodd mewn pryd i gyd-fynd â dadl cynnig cydsyniad yn Senedd Cymru, gydag amseriad y ddadl ei hun yn cael ei bennu gan amserlennu trafodion y Bil drwy Senedd y DU. Ar adegau gall ymddangos nad yw adrannau Llywodraeth y DU yn barod i ystyried y broses cydsyniad deddfwriaethol wrth amserlennu Biliau drwy Senedd y DU, neu nad ydynt yn ymwybodol o sut mae'r broses cydsyniad deddfwriaethol yn gweithredu yn Senedd Cymru. Credwn fod angen i'r sefyllfa hon newid.

**37.** Yn gysylltiedig â hyn, rydym hefyd yn credu y dylai fod mwy o dryloywder ynghylch sut mae'r broses gydsynio yn cyd-fynd â'r amserlen seneddol ar gyfer Biliau unigol y DU. Er y gallai hyn olygu bod angen i Lywodraeth y DU ddarparu gwybodaeth, o ystyried y dylai cydsyniad fod yn ffactor yn ei gwaith cynllunio deddfwriaethol, byddem yn gobeithio na fyddai hyn yn peri problemau.

**38.** Ym mis Mawrth 2023, fe wnaeth y Farwnes Drake, Cadeirydd Pwyllgor Cyfansoddiad Tŷ'r Arglwyddi, ein [hysbysu](#) fod dogfen Busnes Tŷ'r Arglwyddi bellach yn rhoi gwybodaeth lawnach a mwy amlwg ynghylch pryd mae cydsyniad yn yr arfaeth neu'n destun dadl a phryd y mae wedi'i

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<sup>44</sup> Llythyr gan y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad, 30 Mawrth 2021

roi neu ei atal. Croesawyd y newid hwn yn fawr a gobeithiwn y bydd hefyd modd rhoi newidiadau cadarnhaol eraill ar waith.

**39.** Ers 2021, bu naw achlysur pan wrthododd y Senedd roi cydsyniad, ond bod Senedd y DU wedi deddfu serch hynny.<sup>45</sup>

**40.** Credwn na ddylid ystyried problemau o ran ymarferoldeb y broses cydsyniad deddfwriaethol fel mater i'r Senedd yn unig, ond yn hytrach fel mater o bryder i Whitehall a Senedd y DU, o ystyried ei phwysigrwydd i weithrediad effeithiol cyfansoddiad y DU a'r fframwaith cyfansoddiadol presennol.

**41.** Byddai sylfaen gyfansoddiadol fwy cadarn ar gyfer Confensiwn Sewel, wedi'i seilio ar broses sydd wedi'i diffinio'n glir ac sy'n cael ei deall gan bawb, â'r potensial i wella'r ddealltwriaeth o ddatganoli yn Whitehall, gan roi cymhelliad i sicrhau ei fod yn ffactor wrth gynllunio gwaith yn adrannau Llywodraeth y DU a Senedd y DU, a hynny ym mhob rhan o broses deddfwriaethol y DU.

### **Anghytuno ynghylch cymhwysedd deddfwriaethol**

**42.** Fel yr ydym eisoes wedi cyfeirio ato uchod, mae'n ymddangos i ni fod peth ansicrwydd ynghylch i ba raddau y mae modd defnyddio'r broses datrys anghydfod sy'n deillio o'r Adolygiad o Gysylltiadau Rhynglywodraethol i ddatrys anghytuno ynghylch Biliau unigol y DU. Fodd bynnag, mae un agwedd y credwn sy'n haeddu ystyriaeth benodol yn ymwneud ag anghydfodau ynghylch materion cymhwysedd deddfwriaethol. Os na all y strwythurau cysylltiadau rhynglywodraethol newydd ar eu ffurf bresennol ddatrys anghydfod ynghylch cymhwysedd deddfwriaethol ar Filiau penodol y DU, byddai angen canfod mecanwaith newydd. Fan leiaf, dylai fod yn ofynnol i lywodraethau gyhoeddi datganiad yn amlinellu'r meysydd anghydfod y gall Senedd y DU a'r deddfwrfeydd datganoledig eu trafod cyn cwblhau cyfnodau diwygio Bil.

### **Adolygu a diweddarau'r Canllawiau ar Ddatganoli yn rheolaidd<sup>46</sup>**

**43.** Nid yw'n ymddangos bod y Canllawiau ar Ddatganoli wedi'u diweddarau ers 2019 ac eto maent yn allweddol o ran helpu gweision sifil ar draws Whitehall i ddeall datganoli. Rydym yn gofyn felly:

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<sup>45</sup> Ymchwil y Senedd, Confensiwn Sewel: Beth sy'n digwydd i gyfreithiau'r DU y mae'r Senedd yn eu gwrthod?, Gorffennaf 2023. Ers cyhoeddi'r erthygl, mae'r Senedd wedi gwrthod rhoi cydsyniad ar gyfer tri Bil y DU arall.

<sup>46</sup> Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol, Llywodraethiant yn y DU ar ôl gadael yr Undeb Ewropeaidd, Chwefror 2018, gweler argymhelliad 4



- Beth yw'r prosesau sydd ar waith yn y Gwasanaeth Sifil ar gyfer diweddaru'r rhain?
- Beth yw'r prosesau ar gyfer sicrhau y cânt eu dosbarthu a'u defnyddio?
- Pryd fydd y Canllawiau ar Ddatganoli yn cael eu diweddaru i adlewyrchu'r Fframweithiau Cyffredin a datblygiadau ynghylch *Deddf Marchnad Fewnol y Deyrnas Unedig 2020*? Er enghraifft, nid yw'r dogfennau fframweithiau cyffredin wedi'u diweddaru i adlewyrchu'r strwythurau newydd y cytunwyd arnynt fel rhan o'r Adolygiad o Gysylltiadau Rhynglywodraethol.

**44.** Fel yr ydym wedi tynnu sylw ato uchod, cafwyd achosion lle mae ymgysylltiad Llywodraeth y DU â Llywodraeth Cymru wedi bod yn hwyr iawn mewn amgylchiadau lle mae darpariaeth mewn maes datganoledig i'w chynnwys yn un o Filiau'r DU. Mae'n parhau i fod yn aneglur i ni a yw Rhan 2 o'r Canllaw ar Ddatganoli<sup>47</sup>, sy'n ymdrin â chynnwys Bil Senedd y DU, yn cael ei dilyn yn llawn. Credwn felly y byddai'n fuddiol ystyried i ba raddau y mae'r Canllaw ar Ddatganoli penodol hwn yn cael ei ddefnyddio a pha mor effeithiol y mae wedi bod.

**45.** Credwn hefyd y dylid dilyn amserlen ymgysylltu glir ar gyfer holl Filiau'r DU sy'n cynnwys darpariaeth ddatganoledig. Dylid cynnwys gwybodaeth fanwl o'r fath mewn diwygiadau i'r Canllaw ar Ddatganoli y cyfeiriwn ato uchod, ochr yn ochr â diweddariadau angenrheidiol i adlewyrchu canlyniad yr Adolygiad o Gysylltiadau Rhynglywodraethol.

### **Gweinidogion y DU yn ymgysylltu â Phwyllgorau'r Senedd**

**46.** Yn seiliedig ar ein dealltwriaeth, mae gan Weinidogion y DU hanes cymysg o ran ymgysylltu â Phwyllgorau'r Senedd yn gyffredinol. Gall fod yn anodd sicrhau presenoldeb Gweinidogion mewn sesiynau tystiolaeth yn y Senedd, gyda rhai eithriadau. Rydym yn ymwybodol bod rhai Pwyllgorau wedi nodi bod Ysgrifennydd Gwladol Cymru wedi'i gynnig iddynt pan oeddent wedi gofyn am Weinidog o Adran benodol.

**47.** Fel y soniwyd uchod, rydym wedi gwahodd y Gwir Anrhydeddus Michael Gove AS, yr Ysgrifennydd Gwladol dros Ffyniant Bro, Tai a Chymunedau i roi tystiolaeth i ni ar gysylltiadau rhynglywodraethol ar ddau achlysur, unwaith ym mis Chwefror 2023 a thrwy nodyn atgoffa ym mis Mehefin 2023. Er y cydnabuwyd yr ail lythyr, nid ydym wedi cael ymateb ffurfiol eto.

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<sup>47</sup> [Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales](#), diweddardwyd ddiwethaf 20 Ebrill 2018



**48.** Fodd bynnag, roedd yr Arglwydd Bellamy yn fodlon ymddangos gerbron y Pwyllgor ym mis Rhagfyr 2022 ac roedd y sesiwn dystiolaeth yn arbennig o ddefnyddiol i ni, gydag ymgysylltiad yn parhau wedyn drwy ohebiaeth.

# Eitem 4.4

## MEMORANDWM CYDSYNIAD DEDDFWRIAETHOL ATODOL (MEMORANDWM RHIF 5)

### Y BIL FFYNIANT BRO AC ADFYWIO

1. Gosodir y memorandwm cydsyniad deddfwriaethol hwn o dan Reol Sefydlog (RhS) 29.2. Mae RhS 29 yn rhagnodi bod rhaid gosod memorandwm cydsyniad deddfwriaethol, ac y ceir cyflwyno cynnig cydsyniad deddfwriaethol, gerbron Senedd Cymru os bydd Bil gan Senedd y DU yn gwneud darpariaeth mewn perthynas â Chymru at unrhyw ddiben sy'n dod o dan gymhwysedd deddfwriaethol Senedd Cymru neu sy'n newid y cymhwysedd hwnnw.
2. Cyflwynwyd y Bil Ffyniant Bro ac Adfywio ('y Bil') yn Nhŷ'r Cyffredin ar 11 Mai 2022. Mae'r Bil ar gael yma [Levelling-up and Regeneration Bill - Parliamentary Bills - UK Parliament](#)
3. Gosodais [LCM ar gyfer y Bil](#) fel y'i cyflwynwyd ar 28 Medi, [LCM diwygiedig ar 25 Tachwedd](#), [LCM Atodol \(SLCM\) ar 30 Tachwedd 2022 \(Rhif 2\)](#), [SLCM ar 27 Ebrill 2023 \(rhif 3\)](#) ac [SLCM ar 16 Awst 2023 \(rhif 4\)](#).
4. Fe welwch y Bil fel y cafodd ei wella yn y Pwyllgor (24 Mai 2023) yn: <https://bills.parliament.uk/bills/3155/publications>
5. Ar 4 Gorffennaf 2023 a 7 Gorffennaf 2023, cyflwynodd Llywodraeth y DU welliannau i'w hystyried yng Nghyfnod Adrodd Tŷ'r Arglwyddi. Mae'r gwelliannau hyn yn ymwneud â Rhan 1 (Cenadaethau Ffyniant Bro), Pennod 1 o Ran 3 (Data Cynllunio) a Rhan 6 (Adroddiadau am Ganlyniadau Amgylcheddol).
6. Gosododd SLCM (No.4) ar 16 Awst 2023 i roi sylw i'r gwelliannau i Ran 1 (Cenadaethau Ffyniant Bro) a Rhan 7 (Adroddiadau am Ganlyniadau Amgylcheddol). Gosododd Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad ei adroddiad ar SLCM (rhif 4) ar 29 Medi 2023. Bydd Llywodraeth Cymru'n ymateb i'r adroddiad hwnnw cyn dadl y Cyfarfod Llawn ar gydsyniad deddfwriaethol, y disgwylir iddi gael ei chynnal ar 17 Hydref 2023.
7. Mae'r gwelliannau a gyflwynwyd ar gael yn <https://bills.parliament.uk/bills/3155/publications>

### Amcanion Polisi

8. Yr amcan polisi mae Llywodraeth y DU wedi'i ddatgan yw gwrthdroi'r anghyfartalwch rhwng rhannau gwahanol o'r DU drwy rannu cyfleoedd yn fwy cyfartal. O dan yr amcan hwn, mae gan y Bil bedwar amcan cyffredinol:
  - i. Rhoi dyletswydd ar Lywodraeth y DU i nodi'r cynnydd mae angen ei wneud tuag at gyflawni cenadaethau ffyniant bro a lleihau anghyfartalwch rhwng rhannau gwahanol o'r Deyrnas Unedig, ac adrodd ar y cynnydd hwnnw;
  - ii. Creu fframwaith modern i gefnogi datganoli pwerau yn yr oes fodern sydd ohoni yn y ffordd fwyaf radical posibl, drwy greu model newydd ar gyfer awdurdodau sir i gefnogi'r gwaith o gyflawni cenhadaeth ffyniant bro Llywodraeth y DU sy'n nodi 'erbyn 2030 bydd pob rhan o Loegr sy'n dymuno hynny wedi cael cytundeb

datganoli gyda phwerau ar y lefelau uchaf o ddatganoli, neu'n agos at hynny, a setliad ddatganoli symlach ar gyfer y tymor hir';

- iii. Cyflwyno set newydd o bwerau ar gyfer awdurdodau lleol i adfywio eu trefi, drwy arwerthiannau rhentu ar y stryd fawr a diwygiadau i ddeddfwriaeth prynu gorfodol, i gefnogi'r gwaith o gyflawni cenhadaeth ffyniant bro Llywodraeth y DU sy'n nodi 'erbyn 2030 bydd balchder mewn lle, er enghraifft, boddhad pobl ar ganol eu trefi a chyfranogiad yn y diwylliant a'r gymuned leol, wedi codi ym mhob rhan o'r DU, gyda'r bwch rhwng yr ardaloedd gorau ac ardaloedd eraill yn cau'; a
- iv. Creu system gynllunio sy'n sicrhau cartrefi harddach a gwyrddach, ynghyd â'r seilwaith cysylltiedig a'r gefnogaeth ddemocrataidd mae cymdogaethau am eu gweld ac yn eu haeddu.

### **Crynodeb o'r Bil**

9. Rhoddwyd crynodeb o'r Bil yn y Memorandwm Cydsyniad Deddfwriaethol (LCM) diwygiedig gwreiddiol a osodwyd ar 25 Tachwedd 2022.
10. Roedd y Bil fel y'i cyflwynwyd yn gwneud darpariaeth ar gyfer sefydlu cenadaethau ffyniant bro ac ar gyfer adrodd ar gynnydd eu cyflawni; ynghylch democratiaeth leol; ynghylch cynllunio gwlad a thref; ynghylch Ardoll Seilwaith Cymunedol; ynghylch gosod Ardoll Seilwaith; ynghylch Adroddiadau am Ganlyniadau Amgylcheddol rhai cydsyniadau a chynlluniau; ynghylch adfywio; ynghylch prynu tir dan drefniadau gorfodol; ynghylch gwybodaeth a chofnodion mewn perthynas â thir, yr amgylchedd neu dreftadaeth; ynghylch darparu ar gyfer trwyddedau palmant parhaol; ynghylch llywodraethu Sefydliad Brenhinol y Syrfewyr Siartredig; ynghylch crwydraeth a chardota; ac ar gyfer dibenion cysylltiedig.
11. Mae rhagor o wybodaeth am y Bil yn yr LCM cyntaf a osodwyd <https://senedd.cymru/media/aekd01xo/lcm-ld15356-w.pdf>

### **Diweddariad ar y sefyllfa ers cyhoeddi'r Memorandwm Cydsyniad Deddfwriaethol (Rhif 4)**

12. Ar 28 Medi 2023, cyflwynodd Llywodraeth y DU welliannau i'w hystyried yng Nghyfnodau Terfynol Tŷ'r Arglwyddi. Mae'r gwelliannau hyn yn ymwneud â Rhan 6 (Adroddiadau am Ganlyniadau Amgylcheddol). Bydd y gwelliannau hyn yn effeithio ar ddarpariaethau yn y Bil fel y'i cyflwynwyd sydd o fewn cymhwysedd deddfwriaethol Senedd Cymru.

### **Gwelliannau i'r Bil a gyflwynwyd i'w hystyried yng Nghyfnod Adrodd Tŷ'r Arglwyddi y mae angen cydsyniad ar eu cyfer.**

#### Darpariaethau ynghylch y Cynllun Gwella Amgylcheddol

#### *Gwelliant 104*

13. Mewnosododd Gwelliant 104 gyfeiriad yng nghymal 143 (yn y Bil fel y'i diwygiwyd yng Nghyfnod y Pwyllgor) at y "cynllun gwella amgylcheddol" cyfredol (o fewn ystyr Rhan 1 o Ddeddf yr Amgylchedd 2021). Effaith y gwelliant hwn fyddai rhoi

dyletswydd ar Weinidogion Cymru (fel “awdurdod priodol”) i orfod ystyried y Cynllun Gwella Amgylcheddol cyfredol (o fewn ystyr Rhan 1 o Ddeddf yr Amgylchedd 2021) wrth wneud rheoliadau Adroddiadau am Ganlyniadau Amgylcheddol wrth weithredu ar eu pen eu hunain neu gyda’i gilydd.

14. Cafodd trafodaethau eu cynnal rhwng swyddogion Llywodraeth Cymru a Llywodraeth y DU am y ddarpariaeth hon a gynigir. Dywedodd swyddogion Llywodraeth Cymru wrth Lywodraeth y DU bod y ddarpariaeth sy’n cyfateb yng Nghymru i’r “polisi adnoddau naturiol cenedlaethol” wedi’i darparu gan adran 9 o Ddeddf Amgylchedd (Cymru) 2016. Gofynnodd swyddogion Llywodraeth Cymru bod gwelliant 104 yn adlewyrchu hynny, ond anghofwyd gwneud hynny ar y pryd a chytunwyd ar welliant 104 yn ystod y Cyfnod Adrodd.
15. Mae’r trafodaethau wedi bod yn mynd rhagddynt ers hynny ac mae Llywodraeth y DU wedi cyflwyno cynnig yn lle Gwelliant 90 yr Arglwyddi i gywiro hyn.

#### *Cynnig yn lle Gwelliant 90 yr Arglwyddi*

16. Bydd y cynnig yn lle Gwelliant 90 yr Arglwyddi’n newid y cyfeiriad at “y cynllun gwella amgylcheddol cyfredol” yng nghyd-destun y rheoliadau Adroddiadau am Ganlyniadau Amgylcheddol a wnaed gan Weinidogion Cymru. Mae’r gwelliant yn gofyn i Weinidogion Cymru ystyried y “polisi adnoddau naturiol cenedlaethol” o fewn ystyr adran 9 Deddf Amgylchedd (Cymru) 2016 ac nid y Cynllun Gwella Amgylcheddol cyfredol (o fewn ystyr Rhan 1 o Ddeddf yr Amgylchedd 2021).

#### *Darpariaethau Cychwyn*

#### *Gwelliant 315*

17. Mae Pennod 1 o Ran 3 a Rhan 6 o'r Bil yn cynnwys pwerau y gallai'r Ysgrifennydd Gwladol a Gweinidogion/Senedd Cymru eu harfer yr un pryd. Yn ystod trafodaethau â Llywodraeth y DU, ar gais Llywodraeth Cymru, cafodd cymal newydd ei fewnosod yn y Bil (gweler cymal 245 y Bil, fel y'i diwygiwyd yn y Cyfnod Adrodd) a fyddai'n codi'r cyfyngiadau ar Senedd Cymru mewn perthynas â'r pwerau cydamserol hyn drwy ychwanegu'r Bil at y rhestr o ddeddfiadau ym mharagraffau 9(8)(b) ac 11(6)(b) o Atodlen 7B o Ddeddf Llywodraeth Cymru. O ganlyniad câi Senedd Cymru newid y trefniadau cydamserol yn y dyfodol heb fod angen cytundeb Llywodraeth y DU ymlaen llaw.
18. Mae gwelliant 315 yn ymdrin â'r darpariaethau cychwyn ar gyfer cymal 245 (bellach) ac fel y'i cyflwynwyd, darparai fod cymal 245 yn dod i rym ar ba ddiwrnod bynnag y gallai'r Ysgrifennydd Gwladol ei bennu trwy reoliadau. Cytunwyd ar y ddarpariaeth hon yn fuan ar ôl ei chyflwyno yn ystod y Cyfnod Adrodd.
19. Nid oedd y ddarpariaeth gychwyn yn dderbyniol i Lywodraeth Cymru ac yn ystod trafodaethau, cytunodd Llywodraeth y DU i gyflwyno cynnig yn lle Gwelliant 285 yr Arglwyddi i fynd i'r afael â hyn.

#### *Cynnig yn lle Gwelliant 285 yr Arglwyddi*

20. Bydd y cynnig yn lle gwelliant 285 yr Arglwyddi yn golygu y daw cymal 245 i rym ar ddiwedd y cyfnod o ddeufis sy’n dechrau ar ddiwrnod pasio'r Ddeddf.

## **Safbwynt Llywodraeth Cymru ar y gwelliannau arfaethedig**

21. Yn SLCM 4, nodais fod y darpariaethau mewn perthynas ag adroddiadau am ganlyniadau amgylcheddol yn fuddiol, a'm bod yn cefnogi eu cymhwyso i Gymru.
22. Mae'r gwelliannau a wneir yn y fan hon yn golygu bod y fframwaith deddfwriaethol ar gyfer gwneud rheoliadau Adroddiadau am Ganlyniadau Amgylcheddol yn rhai penodol i Gymru a bod y gwelliannau cychwyn yn sicrhau na effeithir ar ein setliad

## **Goblygiadau ariannol**

23. Nid oes unrhyw oblygiadau ariannol ar gyfer Cymru mewn perthynas â'r gwelliannau.
24. Mae effaith ariannol y Bil fel y mae'n effeithio ar Gymru yn cael ei chrynhai yn yr LCMau a osodwyd ar 28 Medi a 25 Tachwedd.

## **Casgliad**

25. Rwy'n dal i ystyried bod y darpariaethau cyffredinol mewn perthynas ag Adroddiadau am Ganlyniadau Amgylcheddol yn rhai priodol i Gymru a bod y gwelliannau hyn yn unioni problemau drafftio sy'n golygu fy mod yn argymhell bod Senedd Cymru yn rhoi ei chydysniad i'r Bil hwn.

**Julie James AS**  
**Y Gweinidog Newid Hinsawdd**  
**05 Hydref 2023**

## **Atodiad A | Cenadaethau Ffyniant Bro**

Ffynhonnell: Y Bil Ffyniant Bro ac Adfywio (Nodiadau Esboniadol) [Levelling-up and Regeneration Bill \(parliament.uk\)](https://www.parliament.uk/levelling-up-and-regeneration-bill)

### **The 12 Levelling Up Missions**

#### **Boosting productivity, increasing pay, and creating jobs**

- a. Increasing living standards: pay, employment and productivity will have risen in every area of the UK, with each containing a globally competitive city, and the gap between the top performing and other areas closing.
- b. Backing Research and Development (R&D) by increasing public investment in R&D outside the South East by at least 33% over this Parliament and at least 40% by 2030.
- c. Overhauling public transport so local connectivity will be significantly closer to the standards of London, with better services, simpler fares and integrated ticketing.
- d. Transforming digital connectivity across the UK with nationwide gigabit-capable broadband with 4G and 5G coverage for the majority.

#### **Spreading opportunity and improving public services**

- e. Improving education outcomes so that 90% of primary school children achieve the expected standard of reading, writing and maths.
- f. Increasing the number of adults who complete high quality skills training, with 200,000 more people completing training annually in England.
- g. Increasing healthy life expectancy, and narrowing the gap between areas where it is highest and lowest.
- h. Improving wellbeing in every area of the UK with a closing gap between the top performing and low performing areas.

#### **Restoring pride in place and community**

- i. Boosting satisfaction with town centres and engagement with local culture and community.
- j. Increasing home ownership and housing standards, with more first-time buyers in all areas and the number of non-decent homes down by 50%
- k. Cutting crime with homicide, serious violence and neighbourhood offences falling, with a focus on the worst affected areas.

#### **Empowering local leaders and communities**

- l. Giving every part of England that wants one a devolution deal, with powers at, or approaching, the highest level of devolution and a simplified long-term funding settlement.

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



**Llywodraeth Cymru**  
**Welsh Government**

Ein cyf/Our ref: JJ/PO/330/2023

Huw Irranca-Davies MS  
Chair, Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

3 October 2023

Dear Huw,

Thank you for your two letters of 27 September and the questions put forward by the Legislation, Justice and Constitution Committee relating to the Infrastructure (Wales) Bill. I am pleased to provide a combined response which is attached at Annex A.

I also attach the Welsh Government's Justice System Impact Identification (JSII) form for the Bill as considered by the Ministry of Justice.

I trust the responses in Annex A answer your questions. However, if there are any additional questions or areas requiring clarification, I am happy to provide further information in writing.

I am copying this letter to the Chair of the Climate Change, Environment, and Infrastructure Committee for information.

Yours sincerely,

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

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

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

**Tudalen y pecyn 21**

## **Annex A**

### **Question 1**

Section 57 relates to the granting or refusal of infrastructure consent. In your letter to us on 11 September 2023, you stated that you envisage subordinate legislation made under this section will specify that the Welsh Ministers “must only make an order which contains minor changes”. You further stated that “whilst on the face of the Bill there is reference to changes to an application being “material”, the regulations will provide clarification that any changes made should only be minor in nature”. If changes are to be minor, why is the power drafted much wider than is necessary to achieve its purpose?

#### Response

The intention is that subordinate legislation will specify that an order made by the Welsh Ministers may only include minor changes to the draft order applied for. Even minor changes can be material in some respects and therefore drafting is appropriate.

### **Question 2**

Section 82 relates to the publication and procedures attached to infrastructure consent orders. By virtue of paragraph 29 of Schedule 1, an order can create a criminal offence. Such an order will be subject to the negative scrutiny procedure. Why has the affirmative procedure not been attached to this power?

#### Response

The Order that is made relates to the granting of an individual development and any criminal offence is relevant and necessary for the granting of the consent. The criminal offences that can be created by an Infrastructure Consent Order are very limited in scope. They will be of local effect and there are limited sentencing powers that may be attached to them.

Because of the pre application processes built into the system, applicants will need to engage with all stakeholders and local communities about any criminal offences they wish to have included in the Order.

The appropriateness for any offences will be one of the aspects that will be scrutinised by the examining authority. These provide suitable safeguards to ensure this power is used appropriately and it will be open to the Welsh Ministers to issue an order without offences that are in the order that was applied for using the power in section 57 of the Bill.



### **Question 3**

Section 88 relates to the procedure for changing and revoking infrastructure consent orders. What persons will always be given notice of a change to or revocation of an infrastructure consent order under section 88(6)?

#### Response:

The ability to seek an amendment or revocation of an infrastructure consent order has many potential avenues, which presents a degree of complexity. For example, there could be a request to revoke an order from an applicant or LPA. Alternatively, the Welsh Ministers have the power to revoke an order unilaterally.

It is therefore difficult to anticipate who would always be given notice of an amendment or revocation of an infrastructure consent order.

However, as a matter of public law and natural justice, there would always be a requirement to provide notice to the person who originally applied for the infrastructure consent order.

Based on these principles of public law and natural justice, it was concluded it would not be necessary to place this requirement on the face of the Bill.

### **Question 4**

Which public authorities will be consulted under section 126(1) and why are they not included on the face of the Bill?

#### Response:

It is intended that the list of authorities and bodies to be identified as statutory consultees will be set out in subordinate legislation following a consultation exercise, to ensure that all relevant bodies are engaged in the process. However, it is anticipated many of the authorities and bodies currently consulted as part of the Development of National Significance process will also be statutory consultees for the purposes of this new consenting regime where a development is on land.

It is envisaged that Natural Resources Wales would be consulted in all instances, however, more specialised public bodies would be consulted under certain circumstances. For example, the Ministry of Defence would be consulted when a development that falls within statutory safeguarding zones as issued under the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002, or when wind developments where any turbine would have a maximum blade tip height of, or exceeding, 11m above ground level and/or has a rotor diameter of, or exceeding, 2.0m.

The list of statutory consultees is considered suitable for regulations, rather than being placed on the face of the Bill as information on consultations with a wide range of public bodies will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure or organisational responsibilities.

## Question 5

In question 6 of our letter to you on 27 July 2023 we queried the ability to “legislate swiftly” as a justification for the application of the negative procedure to a number of delegated powers in the Bill. You provided a response in respect of section 127(2)(c) and 127(4). Could you confirm for the record how the need to act “swiftly” is relevant to the choice of procedure for the direction power in section 127(3)?

### Response:

Section 127(3) clarifies that directions may relate to specific applications or authorities or to applications or authorities generally. For example, the Welsh Ministers may issue a direction on the way notification is carried out on a particular type of infrastructure project due to changes to a website where the applications register is hosted, or amendments to the statutory consultee list.

It would be beneficial for all parties involved that any adjustments are carried out promptly, otherwise the process may continue to pose an unnecessary burden to those involved. The ability to act swiftly will help ensure there are no unnecessary delays or duplication of work.

## Question 6

Section 128 includes a power for the Welsh Ministers to direct that requirements under the Bill do not apply in specified circumstances. Why is it appropriate to include this regulation-making power rather than to make provision on the face of the Bill which set out the specific circumstances?

### Response

The consenting regime introduced by the Bill is intended to provide for one process to be used for consenting a wide range of infrastructure developments and in a wide range of different circumstances.

I set out in the Statement of Policy Intent why we need this power and that due to the wide variety of projects and circumstances a level of flexibility would be vastly beneficial to the process.

This power is not uncontrolled, it is limited to areas specified in regulations. This will mean that all stakeholders can influence where this power should or should not be used., It enables the power to respond to changes in the system, or reflect evidence that comes forward during the operation of the system. I believe it is appropriate to use subordinate legislation to limit this power subject to draft affirmative procedure.

## Question 7

In your letter of 11 September your written answer in relation to section 128 states that “under no circumstances is it intended the subordinate legislation will enable a direction to be issued to disapply requirements which protect rights or ensure no offences are committed”. Will this provision in the Bill, if and when enacted, prevent a future Minister from using this power to disapply requirements which protect rights?

### Response

The direction making power is limited to areas specified in Regulations, with these regulations subject to the draft affirmative procedure. The consultation and Senedd scrutiny of those regulations will provide appropriate safeguards. As I detail above, I do not think it is possible to set out provisions on the face of the Bill where a direction may be issued but if you have suggestions for improvements to this section, I would be happy to consider them.

## Question 8

Section 137 provides for restrictions to apply to the making of regulations and orders under the Bill. What is the purpose of the drafting of this provision and why has it been included given the operation of section 154 of the *Government of Wales Act 2006*? Why does section 137 only refer to some of the provisions of Schedule 7B to the 2006 Act and not others?

### Response

Section 137 of the Bill sets out the restrictions on the scope of the subordinate legislation powers when making provisions that could confer functions on, or modify or remove the functions of, a Minister of the Crown, government department or other reserved authority.

The restrictions in paragraphs 8, 10 and 11 of Schedule 7B to the Government of Wales Act 2006 mentioned in section 137 are of fundamentally different character to other restrictions in Schedule 7B. Most restrictions in Schedule 7B to GOWA 2006 rule things out completely. The restrictions in paragraphs 8, 10 and 11 say that certain things cannot be done unless consent is obtained or consultation is carried out. This has consequences for how best to achieve clarity in the drafting of provisions in Senedd Acts that confer functions on public authorities generally, modify or remove functions of public authorities generally or confer powers to do those things in regulations.

Whilst section 154 of the Government of Wales Act 2006 would have the same effect if section 137 were not in the Bill, it would not be possible to work out from reading the Bill, in combination with GOWA 2006, whether any power in the Bill that appears to authorise the conferral, modification or removal of functions could be used to confer functions on, or modify or remove the functions of, reserved authorities.

In order for a person to understand the scope of the regulation making powers they would need to search for evidence of whether consent had been obtained or

consultation undertaken, and if it had been they would also need to review the correspondence between the Welsh Ministers and the relevant Minister of the Crown to fully understand the provision that could be made in subordinate legislation under the Bill.

By including section 137, the extent of the Welsh Ministers' power to make subordinate legislation is clear from reading the Bill alone and more accessible to users of the legislation.

### **Question 9**

Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

#### Response:

The principles of the Bill (i.e. the creation of Significant Infrastructure Project) and the powers to make regulations to implement the Bill will come into force the day after the Bill receives Royal Assent. We anticipate the implementation period will take a year, subject to the outcome of consultations on subordinate legislation.

### **Question 10**

In your view, will further primary legislation be required in the near future in the field of planning? What are the timescales for the preparation and introduction of this proposed legislation?

#### Response:

This Bill sits outside Town and Country planning, however there is no intention to introduce any other primary planning legislation in this Senedd term other than the Consolidation Bill.

The planning consolidation Bill will bring together provisions from the multiple pieces of legislation that currently set out the legislative framework for planning in Wales. It is hoped that this will enable people using the planning system in Wales to refer to a single, fully bilingual act containing all the relevant law. It is anticipated that the Planning Consolidation Bill will be introduced to the Senedd during 2024.

### **Question 11**

What consideration has been given to accessibility and alignment of legislation in this area, particularly given the future legislative landscape includes a planning consolidation Bill?

#### Response:

The Bill is a standalone piece of legislation and therefore the language used has been drafted with accessibility in mind.

The drafting of the Bill will ensure that the existing planning system and associated legislation are largely unaffected.

The Bill contains consequential provisions to amend existing legislation to ensure alignment within the area of planning and infrastructure. The exercise of these consequential modification powers cannot be used widely and are limited. It cannot be used to do anything contrary to the provisions of the Bill that the Senedd will have considered and approved.

The Planning Consolidation Bill will incorporate any changes to wider legislation made by this Bill which are within the scope of the consolidation project.

**Question 12 (in cover letter)**

**[please explain] How the Bill will enable the Welsh Government to take on further devolved powers and what policy areas those powers will cover?**

Response

The Bill is designed so that there is sufficient flexibility to take account of new and emerging technology or were the Senedd received legislative competency above the existing thresholds.

The reference in the Explanatory Memorandum over aspirations for further devolved powers was not intended to refer to any specific matters but reflects that the process established by the Bill is fit for purpose and ensures that Wales can deal with large scale infrastructure projects in a timely and effective manner.

Notwithstanding that, my letters to the UK Government clearly set out two areas which the Bill could cover.

Offshore region

The Bill does not extend beyond the territorial sea, which is approximately 12 nautical miles offshore as the Senedd only has legislative competence in relation to 'Wales', as defined in the Government of Wales Act.

The Welsh Ministers retain executive competence in the Welsh zone (an area between roughly 12 and 200 nm from the coast of Wales) to consent to energy generating stations up to 350MW under the process set out in the Electricity Act 1989. There is therefore no fundamental difference in 'who' will consent a generating station offshore – however the procedure will be different depending on where the project is located.

My request for legislative competence in this area was to address this issue and to enable the Bill to function effectively in streamlining and modernising the consenting process in this region?.

Battery storage

In terms of Energy storage, the Senedd's legislative competence where it concerns the consenting of energy is capped at 350MW (excluding onshore wind).

Above this threshold the UK Nationally Significant Infrastructure Project (NSIP) regime would be the consenting mechanism. However, in 2020 storage was removed from the NSIP process which resulted in an anomaly between the operation of the two regimes.

Therefore, where a scheme which either solely or mainly generates electricity from storage exceeds 350MW, it is not clear whether the Senedd would have power to legislate how such schemes are consented. The Welsh Ministers, through Local Planning Authorities, would retain executive competence to consider such schemes under the Town and Country Planning Act 1990 onshore, which may not be appropriate for all such schemes.

Again, my request to the UK Government was seeking clarity in this area.

**Question 13 (in subsequent letter)**

[Can you] provide us with an update on intergovernmental discussions and agreements reached relating to the UK Government's Energy Bill since the Senedd voted and did not agree to provide legislative consent for the relevant provisions in the Bill.

Response

I met with Minister Bowie on 13 September 2023 following the vote in the Senedd to withhold consent to the UK Energy Bill. I repeated my concerns with respect to the UK Government legislating on matters within our devolved competence without the consent of the Senedd. However, it was clear that the UK Government intend to continue the progress of the Bill and their intention for the Bill to receive Royal Assent in October.

During the meeting I was clear that in terms of policy direction set out in the Bill the Welsh Government is broadly aligned with the UK Government. Given this I highlighted my desire to work constructively to implement the Bill to ensure that the needs of Wales are appropriately taken into account. Minister Bowie stated his ambition to work constructively with the Devolved Governments and fulfil the requirements in the Bill for consultation before new regulations and polices come into effect.



Llywodraeth Cymru  
Welsh Government

# Justice System Impact Identification

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Form

Overview

Welsh Government officials are submitting this form

- ~~• For information and discussion about the implications~~
- For assessment by the Ministry of Justice  
(Delete the statement which does not apply)

The Welsh Government’s assessment of the impacts of this legislation on the justice system is that it has

- ~~• No or negligible potential impact~~ (in this case complete the JSII form only up to and including question 4.5)
- Low potential impact
- ~~• Medium or High potential impact~~  
(Delete those which do not apply)

This is because:

The proposed legislation, although it introduces new offences and civil proceedings, brings together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The new form of consent will be known as an ‘Infrastructure Consent’ (“IC”) for development or works with the objective of constructing and/or changing use to create a ‘Significant Infrastructure Project’ (“SIP”). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

The number of enforcement cases is anticipated to be minimal based on the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

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



## 1. Bill Title

1.1. Working title of Bill

Infrastructure Consent and Planning (Wales) Bill

## 2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office /  
business area

Planning Directorate

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of  
this form

Date of Submission: 20 January 2023

2.6. b) When is a response  
required?

Response Requested by: 24 March 2023

## 3. Additional contact details

3.1. Legal Contact

3.2. Telephone number

3.3. Email address

#### 4. General information

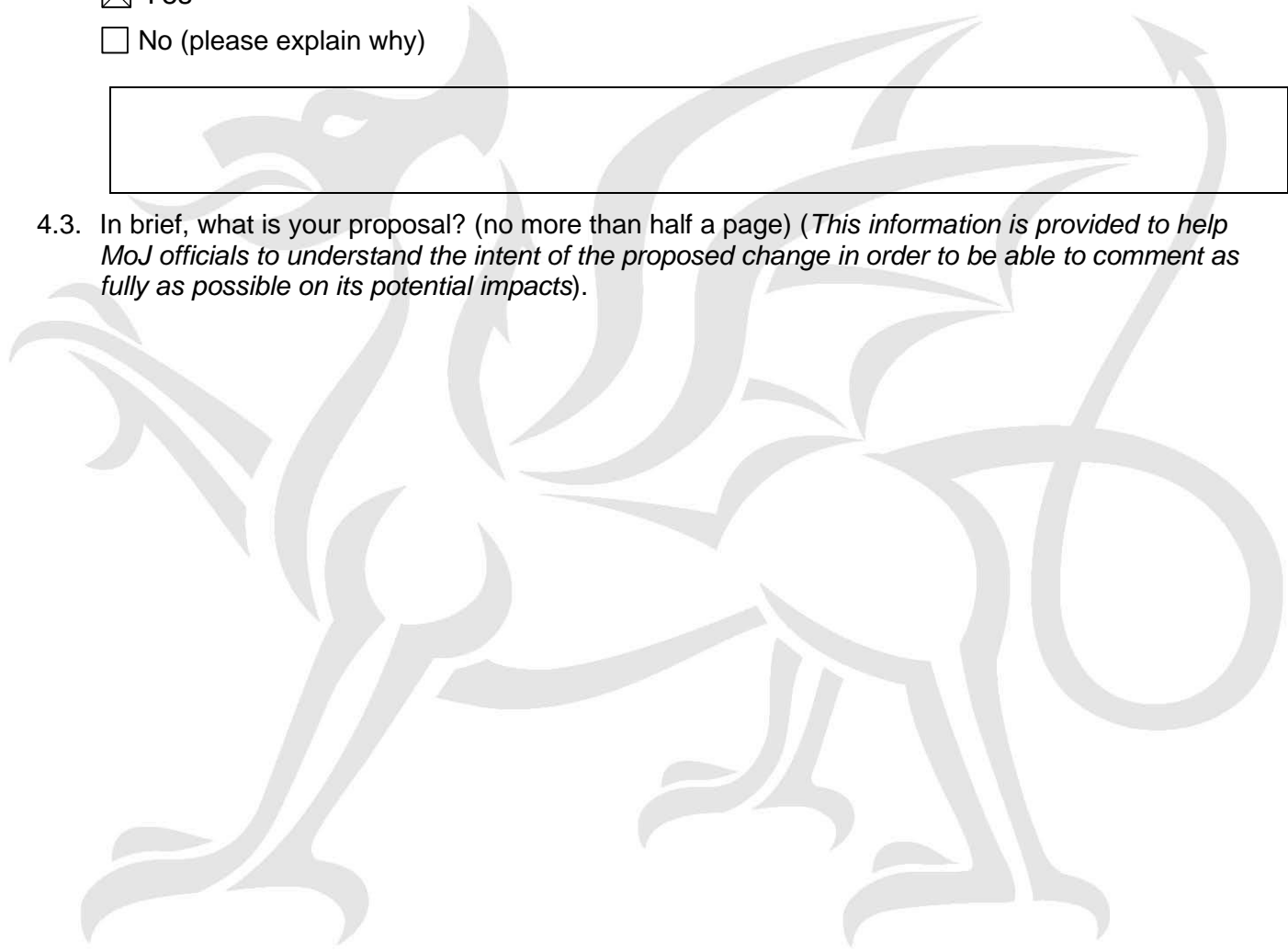
- 4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;  
b) the Justice Policy lead if known.

- 4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

Yes

No (please explain why)

- 4.3. In brief, what is your proposal? (no more than half a page) *(This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts).*



Legislation is required for the purpose of establishing a unified process for the consenting of the development of infrastructure in Wales and in Welsh waters. This primary legislation would create a bespoke and flexible consenting process for infrastructure projects in Wales, detaching their consenting from current arrangements and into a new form of consent, which contains the full range of authorisations required to enable a development. This would simplify the process for developers, communities and consultees as the current procedures often vary according to the different consenting regimes.

The new form of consent will be known as an 'Infrastructure Consent' ("IC") for development or works with the objective of constructing and/or changing use to create a 'Significant Infrastructure Project' ("SIP"). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

As decisions made on an IC will be made by the Welsh Ministers, all decisions will be final. The only available avenue for challenge will be through the courts, which is the current mechanism for planning appeals and applications called in by the Welsh Government. This provides a 6 week period by which the decision may be challenged in the High Court under judicial review.

Local Planning Authorities are proposed to be the main onshore enforcement authority, with the Welsh Ministers as the relevant authority offshore. Enforcement provisions will be mainly based on existing enforcement provisions for large infrastructure developments within the Planning Act 2008, and partially the Town and Country Planning Act (TCPA) 1990 and the Local Government Act 1972. The proposed offences and civil proceedings are set out in further detail within this form.

Current consenting regimes have differing levels of consistency and the processes are spread over a series of Acts which have been modified significantly, which can be confusing for the user and duplicate work. This can significantly increase the costs of applications and can act as a barrier to bringing forward proposals and cause frustration and confusion.

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

4.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it?

It is anticipated that the proposed consenting regime will be fully operational by Mid-2025.

The monitoring and evaluation of the legislation will be undertaken in a number of ways including:

- Research, evaluation and data collection techniques;
- Evaluation project within 3 years of implementation of the regime to measure outcomes;
- Statutory targets set for the determination of applications for Infrastructure Consent;
- Formal monitoring of Planning and Environment Decisions Wales (PEDW) in relation to Infrastructure Consent applications.

4.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

No.

4.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

The aspects of the Bill covered in this JSII will be brought into force by commencement order(s). Subordinate legislation in relation to offences will be subject to the negative procedure. There is no procedure for the statutory instrument in section 82(4) [J511(4)].

4.7. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

- a) It is anticipated that all aspects of the legislation to enable the new consenting regime to operate will be in force by Mid-2025. This is dependent on the date of Royal Assent.
- b) This is unknown as this will depend on compliance with the various powers but would not be before the consenting regime is operational.

4.8. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

The persons affected by these provisions include applicants, the landowner (if not the applicant), any occupier of the land and any person carrying out operations on the land or using it for any purpose.

The proposals will give local planning authorities powers to undertake enforcement action, including rights to enter land and issuing notices.

The proposals will give Welsh Ministers powers to undertake enforcement action, including rights to enter land, issuing notices, applying for injunctions and creating offences. The creation of offences is limited to being in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour.

4.9. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland

Other (Please Specify)

The legislation will only apply to Wales.

4.10. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

The provisions will apply to both those resident to, and those living outside of Wales, as enforcement action is essentially taken out against the landowner, applicant, or those undertaking any unauthorised works regardless of residence. This reflects the current legislative approach.

A communications plan supporting the Bill outlines the various methods to ensure relevant stakeholders are aware of the legislation and its implications for them.

4.11. What are the options under consideration and how does this change the existing situation?

There are 4 options under consideration, which are set out below:

Option 1 - Do nothing. Applications for infrastructure to be determined according to the current legislative arrangements. No change to the current justice system, this option would retain a fragmented consenting regime which does not provide the one-stop shop the development industry seeks.

Option 2 – Establish a new form of ‘Welsh Infrastructure Consent’ for development or works with the objective of constructing and/or changing use to create a ‘Welsh Infrastructure Project’. This is the preferred option and the details of this are included in this form.

Option 3 – Establish an independent consenting body to determine ‘Welsh Infrastructure Consents’. This option would use the same approach to the justice system as Option 2.

Option 4 – Establish a streamlined regime to be determined by a consenting unit within Welsh Government. There would be no change to the current justice system in this option.

The anticipated scale of impact is anticipated to be minimal due to nature and scale of Infrastructure Consent applications. This is discussed in more detail in the sections below.

4.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

It is proposed that disputes in relation to compensation including:

- Whether compensation should be paid;
- How much compensation should be paid;
- Apportionment of compensation;
- Compensation in relation to damage to land or property.

are to be referred to and dealt by the Upper Tribunal.

## Criminal Offences and Civil Penalties and Sanctions

4.13. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

4.14. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

Four of the offences are proposed to be triable either way, see section 4.17 below. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The proposed approach reflects the existing legislation in the Planning Act 2008, TCPA 1990 and the Local Government Act 1972 because enforcing authorities are familiar with those existing processes, there would be no need to train those authorities in enforcing authorities in dealing with different types of offence, and those existing methods of enforcement have been relatively successful to date in acting as deterrents in the context of major infrastructure projects. The changes from summary only to triable either way reflect the analysis undertaken following the Law Commission report for the consolidation of planning law in Wales<sup>1</sup>.

4.15. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action? Please also include the anticipated costs of enforcement and how it will be funded.

Local planning authorities and the Welsh Ministers will be responsible for undertaking enforcement action. There is not expected to be an increased need for enforcement action as the policy proposals seek to bring various existing consenting processes under one, consistent process. Therefore, there will likely be no change to levels of enforcement action already undertaken.

4.16. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

The proposed provisions replicate existing provisions in the Planning Act 2008 and TCPA 1990. We are not aware of any prosecutions under the existing legislation in relation to Developments of National Significance or Development Consent Orders.

The number is anticipated to be low, due to the potential size and scale of development captured under the unified consenting process resulting in few applications being submitted each year (estimated at around 5 per year) and the fact that any formal enforcement action undertaken via the planning system is generally a last resort (in the first instance, the enforcing authority would usually attempt to rectify and potential breaches of planning control through informal discussions).

4.17. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

This means that seven of the offences are summary only, to be heard by the Magistrates' court. Four of the offences are summary or indictment, to be heard either by the Magistrates or Crown Courts, we anticipate the vast majority of cases (if they do go court) would be heard in the Magistrates' Court.

<b>Proposed Offence</b>	<b>Proposed Mode of Trial</b>	<b>Existing legislation (Planning Act 2008 unless otherwise stated)</b>
26(5)[J225]	Summary	Same as 52(9)
26(6)[J225]	Summary	Same as 52(9)
41(6)[J042A]	Either Summary or Indictment	Change from summary to either way and removed power of imprisonment. s.250(3) (Local Government Act 1972)
104[J460]	Either Summary or Indictment	Same as s.160
105[J461]	Either Summary or Indictment	Same as s.161
109(2)[J465]	Summary	Same as s.165(2)
112(3)[J468]	Summary	Same as s.168
112(5)[J468]	Either Summary or Indictment	Change from summary to either way s.168
115(2)[J470]	Summary	Same as s.170(6)
120[J478]	Either Summary or Indictment	Same as s.171G (Town and Country Planning Act 1990)
125(6)[J450]	Summary	Same as s.53(5)
Sch.1 Para 30[J504s]	Summary	Same as Sch. 5 Para 32B
Sch. 3 Para 10[J]	Not applicable - disapplying offences	

4.18. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

**s.26(5)[j225]**

A person convicted of non-compliance with a notice requiring information about interests in the land, or providing false information is liable (on summary conviction) to a fine.

**s.26(6)[j225]**

A person convicted of providing false information to notice requiring information about interests in the land is liable (on summary conviction or conviction on indictment) to a fine.

**s.41(6)[J042A]**

A person convicted of non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document is liable (on summary conviction or conviction on indictment) to a fine.

**s.104[J460]**

A person convicted of undertaking development without the required infrastructure consent is liable (on summary conviction or conviction on indictment) to a fine.

**s.105[J461]**

A person convicted of breach of an infrastructure consent order or failure to comply with an infrastructure consent order is liable (on summary conviction or conviction on indictment) to a fine.

**s.109(2)[J465]**

A person who intentionally obstructs a person who has the right of entry is liable (on summary conviction) to a fine.

**s.112(3)[J468]**

A person convicted of non-compliance with an information notice within 21 days, unless they have a reasonable excuse is liable (on summary conviction) to a fine.

**s.112(5)[J468]**

A person convicted of providing false or misleading information when complying with a requirement of an information notice is liable (on summary conviction or on a conviction on indictment) to a fine.

**s.115(2)[J470]**

A person convicted of intentionally obstructing a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development, is liable (on summary conviction) to a fine.

**s.120[J478]**

A person convicted of non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it, is liable (on summary conviction or on conviction on indictment) to a fine. In determining the amount of the fine, the court must have regard to any financial benefit which has accrued or appeared to accrue to the person convicted.

**s.125(6)[j450]**

A person convicted of wilfully obstructing a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order is liable (on summary conviction) to a fine.

**Sch.1 Para 30[J504s]**

The creation of offences (under Sch. 1 Para 30) in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour would be liable (on summary conviction) to a fine not exceeding level 3 on the standard scale. The person would not be liable to imprisonment.

5.



## Summary Table

Proposed Offence	Proposed Fine	Existing legislation (Planning Act 2008 unless otherwise stated)
26(5)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52(6)
26(6)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52 (7)
41(6)[J042A]	Unlimited	Change from not exceeding level 3 on standard scale. s.250 (Local Government Act 1972)
104[J460]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.160
105[J461]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.161
109(2)[J465]	Unlimited	Same 165(2)
112(3)[J468]	Unlimited	Same 168
112(5)[J468]	Unlimited	Change from not exceeding level 5 on standard scale. s.168
115(2)[J470]	Unlimited	Same as 170(6)
120[J478]	Unlimited	Same as 171G (Town and Country Planning Act 1990)
125(6)[J450]	Unlimited	Same as 53(5)
Sch.1 Para 30[J504s]	Not exceeding level 3 on standard scale	Same as Sch. 5 Para 32B

5.1. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

The proposed offences and the existing legislation that they are based upon are set out in the table below. See also section 4.19.

<b>Proposed Legislation Section</b>	<b>Existing Legislation based on</b>	<b>Offence</b>
26(5) [J225]	52(6) Planning Act 2008	Non-compliance with a notice requiring information about interests in the land
26(6)[J225]	52(7) Planning Act 2008	Providing false information to notice requiring information about interests in the land
41(6) [J042A]	250(2) – (3) Local Government Act 1972	Non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document.
104 [J460]	160 Planning Act 2008	Undertaking development without the required infrastructure consent.
105 [J461]	161 Planning Act 2008	Breach of an infrastructure consent order or failure to comply with an infrastructure consent order.
109(2) [J465]	165(2) Planning Act 2008	Intentional obstruction of a person who has the right of entry.
112(3) [J468]	168(1) Planning Act 2008	Non-compliance with an information notice within 21 days, unless they have a reasonable excuse.
112(5)[J468]	168(4) Planning Act 2008	Providing false or misleading information when complying with a requirement of an information notice.
115(2) [J470]	170(6) Planning Act 2008	Intentional obstruction of a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development.
120 [J478]	171G Town and Country Planning Act 1990	Non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it.
125(6) [J450]	53(5) Planning Act 2008	Wilful obstruction of a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order
Sch. 1 Para 30 [J504s]	Sch.5 Para 32B Planning Act 2008	Creation of offences in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour. This is limited by s.58(7)[J504(7)] which means that an Infrastructure Consent Order cannot create an offence, give a power to create an offence or change an existing power to create offences.
Sch. 3 Para 10	58(4) & 118(2) Historic Environment (Wales) Bill as introduced 4 July 2022.	Exception to offences of damaging certain monuments of special historic interest. Disapplication of offence of intentionally damaging a listed building.

5.2. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.



The equivalent existing power for offences is set out in the table above (para 4.19). The impacts to Civil proceedings are set out below:

Proposed Legislation Section	Existing Legislation based on	Civil proceedings
92[J139]	Sch. 6 Para 7 Planning Act 2008	Compensation - Disputes in relation to apportionment of costs as a result of a revocation made to the Upper Tribunal
95[J142]	Sch. 6 Para 7 Planning Act 2008 (varied)	Compensation - Disputes in relation to compensation for revocation made to the Upper Tribunal
98[J513]	118 Planning Act 2008	Legal challenges relating to applications for orders granting development consent
100(5)[J207]	106C Town and Country Planning Act 1990	Legal challenges relating to infrastructure consent obligations.
103(4)[J601]	152 Planning Act 2008	Compensation in case where no right to claim in nuisance
108[J464]	164 Planning Act 2008	Power for a justice of the peace to issue a warrant to enable entry to land for enforcement purposes.
109(6)[J465]	165(5) Planning Act 2008	Rights of entry – disputes in relation to compensation for rights of entry
114[J472]	170 (via regs under (4)) Planning Act 2008 s.276, 289, 294 Public Health Act 1936	Execution of works required by notice of unauthorised development – order requiring steps to be taken in relation to a notice of unauthorised development
122[J481]	171 Planning Act 2008	Injunctions – against an actual or expected activity which is an offence under j460 or j461
124(4)[210]	95(4)&(5) Planning Act 2008 250 Local Government Act 1972	Orders relating to costs of parties on examination proceedings and recovery of costs.
125(9)[J450]	53(8) Planning Act 2008	Rights of entry – disputes over costs, damage to land

Creation of the offences and civil proceedings is considered to be both proportionate and necessary to deliver the Infrastructure Consent and Planning (Wales) Bill objectives. The proposed penalties reflect existing legislation in the Planning Act 2008, the TCPA 1990, the Local Government Act 1972 and the Public Health Act 1936. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime which would otherwise be subject to the offences and penalties within the existing legislation as outlined in this form. It is therefore considered that this would not result in additional costs to the justice system. The approach taken in s.124(4) reflects the powers in the Planning Act 2008 and the Local Government Act 1972, reflects the drafting style for the equivalent provisions in the emerging Historic Environment (Wales) Bill<sup>2</sup>, which is currently in the Senedd to ensure consistency and reflect modern drafting.

#### Tudalen y pecyn 42

- 5.3. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

The impact on an individual found guilty reflects the current situation for the planning related offences these are based upon, including criminal record, fines etc.

- 5.4. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

There is a duty for the public sector in the infrastructure consenting process under the Bill, including enforcement. There is the opportunity for individuals or businesses to challenge the process using judicial review.

## 6. HM Courts & Tribunals Service and the Welsh Tribunals Service

### Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 6.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

It is anticipated that there is unlikely to be an impact on the number of cases being taken to court or through the Upper Tribunal due to the proposals seek to bring various existing consenting processes under one, consistent process.

- 6.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No  
 Yes (please provide details)

The proposals are not introducing a new duty in this manner.

### Appeal Rights

- 6.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

The Bill allows appeals to the Administrative Court through judicial review as there are numerous decisions in the Bill made by a public body. The Bill also allows for a reduction of time limits in which to bring proceedings for JR contained in CPR 54(1) from 3 months to 6 weeks, in line with the planning system. Although this is a new right of appeal under the legislation, the effect is that the proposals seek to bring various existing consenting processes under one, consistent process. These will be handled by HM Courts & Tribunals Service rather than Welsh Tribunals as is currently the case.

- 6.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No.

## Alternative Dispute Resolution

- 6.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

This already occurs in planning enforcement related matters. Formal enforcement action is often considered to be a 'last resort' by the enforcing authority, who will often use more informal / mediation tactics, depending upon the scale / type of offence. For example, if a local planning authority is notified of an unauthorised development, they may consider it more appropriate in that particular circumstance to request the developer submit a retrospective planning application, rather than immediately issue an enforcement notice, or any other type of enforcement action. However, they are also provided with the tools necessary if it is considered development should stop immediately for certain reasons, such as temporary stop notices.

## Prosecution and Enforcement

- 6.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

It would likely be the Local Planning Authority that would bring any prosecutions. The Counsel General will also have powers to bring any prosecutions under section 67 of the Government of Wales Act 2006.

- 6.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes, an individual can apply to High Court Enforcement Offers to recover that debt which reflects current practice.

## HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 6.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

The Bill allows for a reduction of time limits in which to bring proceedings for judicial review contained in Civil Procedure Rule 54(1) from 3 months to 6 weeks, in line with the planning system. The timescales for the implementation and operation of the proposals are set out in section 4.7.

- 6.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

No.

## 7. Legal Aid and Court Fees

- 7.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:
- legal representation and legal advice in order to secure a fair hearing of their case
  - associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

It is unlikely that Legal Aid would be available, however this would depend on the complexity of the case. The award of costs would be issued by the judge. Estimates of complexity, length and costs of cases are not possible due to the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

7.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

7.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

## 8. Prisons and Offender Management Services

### Impact on HM Prison Services

8.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

No.

8.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No.





## 9. Main Justice System Impacts Identified

### 9.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	---	---	---		
	---	---	---		
	---	---	---		
Civil Penalties	---	---	---		
	---	---	---		
	---	---	---		
HM Courts & Tribunals Services	---	---	---		
	---	---	---		
	---	---	---		
Welsh Tribunals	---	---	---		
	---	---	---		
	---	---	---		

Tudalen y peyrn 47

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Legal Aid	_____	_____	_____		
	_____	_____	_____		
	_____	_____	_____		
Notes:-					

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**9.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):**

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) <sup>3</sup> (please provide numeric estimate and min-max range)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Notes:					

**Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.**

<sup>3</sup> The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>

**Y Pwyllgor Deddfwriaeth,  
Cyfiawnder a'r Cyfansoddiad**

**Legislation, Justice and  
Constitution Committee**

**Senedd Cymru**

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0300 200 6565

Julie James AS

Y Gweinidog Newid Hinsawdd

27 Medi 2023

Annwyl Julie,

Gohebiaeth yn dilyn y sesiwn ar 25 Medi 2023 – y Bil Ynni

Diolch eto am ddod i'n cyfarfod ar 25 Medi 2023.

Yn ystod y cyfarfod, gwnaethoch ymrwymo i roi'r wybodaeth ddiweddaraf i ni am y trafodaethau rhynglywodraethol a gafwyd, a'r hyn y cytunwyd arno, ynghylch Bil Ynni Llywodraeth y DU ers i'r Senedd bleidleisio yn erbyn rhoi ei chydsyniad deddfwriaethol ar gyfer y darpariaethau perthnasol yn y Bil.

Byddem yn ddiolchgar o gael eich ymateb erbyn 18 Hydref 2023.

Yn gywir,

*Huw Irranca-Davies*

Huw Irranca-Davies

Cadeirydd





Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: JJ/PO/330/2023

Huw Irranca-Davies MS  
Chair, Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

3 October 2023

Dear Huw,

Thank you for your two letters of 27 September and the questions put forward by the Legislation, Justice and Constitution Committee relating to the Infrastructure (Wales) Bill. I am pleased to provide a combined response which is attached at Annex A.

I also attach the Welsh Government's Justice System Impact Identification (JSII) form for the Bill as considered by the Ministry of Justice.

I trust the responses in Annex A answer your questions. However, if there are any additional questions or areas requiring clarification, I am happy to provide further information in writing.

I am copying this letter to the Chair of the Climate Change, Environment, and Infrastructure Committee for information.

Yours sincerely,

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

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

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[Gohebiaeth.Julie.James@llyw.cymru](mailto:Gohebiaeth.Julie.James@llyw.cymru)  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

Tudalen y pecyn 50  
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Annex A**

### **Question 1**

Section 57 relates to the granting or refusal of infrastructure consent. In your letter to us on 11 September 2023, you stated that you envisage subordinate legislation made under this section will specify that the Welsh Ministers “must only make an order which contains minor changes”. You further stated that “whilst on the face of the Bill there is reference to changes to an application being “material”, the regulations will provide clarification that any changes made should only be minor in nature”. If changes are to be minor, why is the power drafted much wider than is necessary to achieve its purpose?

#### Response

The intention is that subordinate legislation will specify that an order made by the Welsh Ministers may only include minor changes to the draft order applied for. Even minor changes can be material in some respects and therefore drafting is appropriate.

### **Question 2**

Section 82 relates to the publication and procedures attached to infrastructure consent orders. By virtue of paragraph 29 of Schedule 1, an order can create a criminal offence. Such an order will be subject to the negative scrutiny procedure. Why has the affirmative procedure not been attached to this power?

#### Response

The Order that is made relates to the granting of an individual development and any criminal offence is relevant and necessary for the granting of the consent. The criminal offences that can be created by an Infrastructure Consent Order are very limited in scope. They will be of local effect and there are limited sentencing powers that may be attached to them.

Because of the pre application processes built into the system, applicants will need to engage with all stakeholders and local communities about any criminal offences they wish to have included in the Order.

The appropriateness for any offences will be one of the aspects that will be scrutinised by the examining authority. These provide suitable safeguards to ensure this power is used appropriately and it will be open to the Welsh Ministers to issue an order without offences that are in the order that was applied for using the power in section 57 of the Bill.

### **Question 3**

Section 88 relates to the procedure for changing and revoking infrastructure consent orders. What persons will always be given notice of a change to or revocation of an infrastructure consent order under section 88(6)?

#### Response:

The ability to seek an amendment or revocation of an infrastructure consent order has many potential avenues, which presents a degree of complexity. For example, there could be a request to revoke an order from an applicant or LPA. Alternatively, the Welsh Ministers have the power to revoke an order unilaterally.

It is therefore difficult to anticipate who would always be given notice of an amendment or revocation of an infrastructure consent order.

However, as a matter of public law and natural justice, there would always be a requirement to provide notice to the person who originally applied for the infrastructure consent order.

Based on these principles of public law and natural justice, it was concluded it would not be necessary to place this requirement on the face of the Bill.

### **Question 4**

Which public authorities will be consulted under section 126(1) and why are they not included on the face of the Bill?

#### Response:

It is intended that the list of authorities and bodies to be identified as statutory consultees will be set out in subordinate legislation following a consultation exercise, to ensure that all relevant bodies are engaged in the process. However, it is anticipated many of the authorities and bodies currently consulted as part of the Development of National Significance process will also be statutory consultees for the purposes of this new consenting regime where a development is on land.

It is envisaged that Natural Resources Wales would be consulted in all instances, however, more specialised public bodies would be consulted under certain circumstances. For example, the Ministry of Defence would be consulted when a development that falls within statutory safeguarding zones as issued under the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002, or when wind developments where any turbine would have a maximum blade tip height of, or exceeding, 11m above ground level and/or has a rotor diameter of, or exceeding, 2.0m.

The list of statutory consultees is considered suitable for regulations, rather than being placed on the face of the Bill as information on consultations with a wide range of public bodies will present a significant level of detail and will also need to be flexible to respond to any future changes in procedure or organisational responsibilities.

## Question 5

In question 6 of our letter to you on 27 July 2023 we queried the ability to “legislate swiftly” as a justification for the application of the negative procedure to a number of delegated powers in the Bill. You provided a response in respect of section 127(2)(c) and 127(4). Could you confirm for the record how the need to act “swiftly” is relevant to the choice of procedure for the direction power in section 127(3)?

### Response:

Section 127(3) clarifies that directions may relate to specific applications or authorities or to applications or authorities generally. For example, the Welsh Ministers may issue a direction on the way notification is carried out on a particular type of infrastructure project due to changes to a website where the applications register is hosted, or amendments to the statutory consultee list.

It would be beneficial for all parties involved that any adjustments are carried out promptly, otherwise the process may continue to pose an unnecessary burden to those involved. The ability to act swiftly will help ensure there are no unnecessary delays or duplication of work.

## Question 6

Section 128 includes a power for the Welsh Ministers to direct that requirements under the Bill do not apply in specified circumstances. Why is it appropriate to include this regulation-making power rather than to make provision on the face of the Bill which set out the specific circumstances?

### Response

The consenting regime introduced by the Bill is intended to provide for one process to be used for consenting a wide range of infrastructure developments and in a wide range of different circumstances.

I set out in the Statement of Policy Intent why we need this power and that due to the wide variety of projects and circumstances a level of flexibility would be vastly beneficial to the process.

This power is not uncontrolled, it is limited to areas specified in regulations. This will mean that all stakeholders can influence where this power should or should not be used., It enables the power to respond to changes in the system, or reflect evidence that comes forward during the operation of the system. I believe it is appropriate to use subordinate legislation to limit this power subject to draft affirmative procedure.

## Question 7

In your letter of 11 September your written answer in relation to section 128 states that “under no circumstances is it intended the subordinate legislation will enable a direction to be issued to disapply requirements which protect rights or ensure no offences are committed”. Will this provision in the Bill, if and when enacted, prevent a future Minister from using this power to disapply requirements which protect rights?

### Response

The direction making power is limited to areas specified in Regulations, with these regulations subject to the draft affirmative procedure. The consultation and Senedd scrutiny of those regulations will provide appropriate safeguards. As I detail above, I do not think it is possible to set out provisions on the face of the Bill where a direction may be issued but if you have suggestions for improvements to this section, I would be happy to consider them.

## Question 8

Section 137 provides for restrictions to apply to the making of regulations and orders under the Bill. What is the purpose of the drafting of this provision and why has it been included given the operation of section 154 of the *Government of Wales Act 2006*? Why does section 137 only refer to some of the provisions of Schedule 7B to the 2006 Act and not others?

### Response

Section 137 of the Bill sets out the restrictions on the scope of the subordinate legislation powers when making provisions that could confer functions on, or modify or remove the functions of, a Minister of the Crown, government department or other reserved authority.

The restrictions in paragraphs 8, 10 and 11 of Schedule 7B to the Government of Wales Act 2006 mentioned in section 137 are of fundamentally different character to other restrictions in Schedule 7B. Most restrictions in Schedule 7B to GOWA 2006 rule things out completely. The restrictions in paragraphs 8, 10 and 11 say that certain things cannot be done unless consent is obtained or consultation is carried out. This has consequences for how best to achieve clarity in the drafting of provisions in Senedd Acts that confer functions on public authorities generally, modify or remove functions of public authorities generally or confer powers to do those things in regulations.

Whilst section 154 of the Government of Wales Act 2006 would have the same effect if section 137 were not in the Bill, it would not be possible to work out from reading the Bill, in combination with GOWA 2006, whether any power in the Bill that appears to authorise the conferral, modification or removal of functions could be used to confer functions on, or modify or remove the functions of, reserved authorities.

In order for a person to understand the scope of the regulation making powers they would need to search for evidence of whether consent had been obtained or



consultation undertaken, and if it had been they would also need to review the correspondence between the Welsh Ministers and the relevant Minister of the Crown to fully understand the provision that could be made in subordinate legislation under the Bill.

By including section 137, the extent of the Welsh Ministers' power to make subordinate legislation is clear from reading the Bill alone and more accessible to users of the legislation.

### **Question 9**

Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

#### Response:

The principles of the Bill (i.e. the creation of Significant Infrastructure Project) and the powers to make regulations to implement the Bill will come into force the day after the Bill receives Royal Assent. We anticipate the implementation period will take a year, subject to the outcome of consultations on subordinate legislation.

### **Question 10**

In your view, will further primary legislation be required in the near future in the field of planning? What are the timescales for the preparation and introduction of this proposed legislation?

#### Response:

This Bill sits outside Town and Country planning, however there is no intention to introduce any other primary planning legislation in this Senedd term other than the Consolidation Bill.

The planning consolidation Bill will bring together provisions from the multiple pieces of legislation that currently set out the legislative framework for planning in Wales. It is hoped that this will enable people using the planning system in Wales to refer to a single, fully bilingual act containing all the relevant law. It is anticipated that the Planning Consolidation Bill will be introduced to the Senedd during 2024.

### **Question 11**

What consideration has been given to accessibility and alignment of legislation in this area, particularly given the future legislative landscape includes a planning consolidation Bill?

#### Response:

The Bill is a standalone piece of legislation and therefore the language used has been drafted with accessibility in mind.

The drafting of the Bill will ensure that the existing planning system and associated legislation are largely unaffected.

The Bill contains consequential provisions to amend existing legislation to ensure alignment within the area of planning and infrastructure. The exercise of these consequential modification powers cannot be used widely and are limited. It cannot be used to do anything contrary to the provisions of the Bill that the Senedd will have considered and approved.

The Planning Consolidation Bill will incorporate any changes to wider legislation made by this Bill which are within the scope of the consolidation project.

**Question 12 (in cover letter)**

**[please explain] How the Bill will enable the Welsh Government to take on further devolved powers and what policy areas those powers will cover?**

Response

The Bill is designed so that there is sufficient flexibility to take account of new and emerging technology or were the Senedd received legislative competency above the existing thresholds.

The reference in the Explanatory Memorandum over aspirations for further devolved powers was not intended to refer to any specific matters but reflects that the process established by the Bill is fit for purpose and ensures that Wales can deal with large scale infrastructure projects in a timely and effective manner.

Notwithstanding that, my letters to the UK Government clearly set out two areas which the Bill could cover.

Offshore region

The Bill does not extend beyond the territorial sea, which is approximately 12 nautical miles offshore as the Senedd only has legislative competence in relation to 'Wales', as defined in the Government of Wales Act.

The Welsh Ministers retain executive competence in the Welsh zone (an area between roughly 12 and 200 nm from the coast of Wales) to consent to energy generating stations up to 350MW under the process set out in the Electricity Act 1989. There is therefore no fundamental difference in 'who' will consent a generating station offshore – however the procedure will be different depending on where the project is located.

My request for legislative competence in this area was to address this issue and to enable the Bill to function effectively in streamlining and modernising the consenting process in this region?.

Battery storage

In terms of Energy storage, the Senedd's legislative competence where it concerns the consenting of energy is capped at 350MW (excluding onshore wind).

Above this threshold the UK Nationally Significant Infrastructure Project (NSIP) regime would be the consenting mechanism. However, in 2020 storage was removed from the NSIP process which resulted in an anomaly between the operation of the two regimes.

Therefore, where a scheme which either solely or mainly generates electricity from storage exceeds 350MW, it is not clear whether the Senedd would have power to legislate how such schemes are consented. The Welsh Ministers, through Local Planning Authorities, would retain executive competence to consider such schemes under the Town and Country Planning Act 1990 onshore, which may not be appropriate for all such schemes.

Again, my request to the UK Government was seeking clarity in this area.

**Question 13 (in subsequent letter)**

[Can you] provide us with an update on intergovernmental discussions and agreements reached relating to the UK Government's Energy Bill since the Senedd voted and did not agree to provide legislative consent for the relevant provisions in the Bill.

Response

I met with Minister Bowie on 13 September 2023 following the vote in the Senedd to withhold consent to the UK Energy Bill. I repeated my concerns with respect to the UK Government legislating on matters within our devolved competence without the consent of the Senedd. However, it was clear that the UK Government intend to continue the progress of the Bill and their intention for the Bill to receive Royal Assent in October.

During the meeting I was clear that in terms of policy direction set out in the Bill the Welsh Government is broadly aligned with the UK Government. Given this I highlighted my desire to work constructively to implement the Bill to ensure that the needs of Wales are appropriately taken into account. Minister Bowie stated his ambition to work constructively with the Devolved Governments and fulfil the requirements in the Bill for consultation before new regulations and polices come into effect.



Llywodraeth Cymru  
Welsh Government

# Justice System Impact Identification

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Form

Overview

Welsh Government officials are submitting this form

- ~~• For information and discussion about the implications~~
- For assessment by the Ministry of Justice  
(Delete the statement which does not apply)

The Welsh Government’s assessment of the impacts of this legislation on the justice system is that it has

- ~~• No or negligible potential impact~~ (in this case complete the JSII form only up to and including question 4.5)
- Low potential impact
- ~~• Medium or High potential impact~~  
(Delete those which do not apply)

This is because:

The proposed legislation, although it introduces new offences and civil proceedings, brings together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The new form of consent will be known as an ‘Infrastructure Consent’ (“IC”) for development or works with the objective of constructing and/or changing use to create a ‘Significant Infrastructure Project’ (“SIP”). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

The number of enforcement cases is anticipated to be minimal based on the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

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

## 1. Bill Title

1.1. Working title of Bill

Infrastructure Consent and Planning (Wales) Bill

## 2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office /  
business area

Planning Directorate

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of  
this form

Date of Submission: 20 January 2023

2.6. b) When is a response  
required?

Response Requested by: 24 March 2023

## 3. Additional contact details

3.1. Legal Contact

3.2. Telephone number

3.3. Email address

#### 4. General information

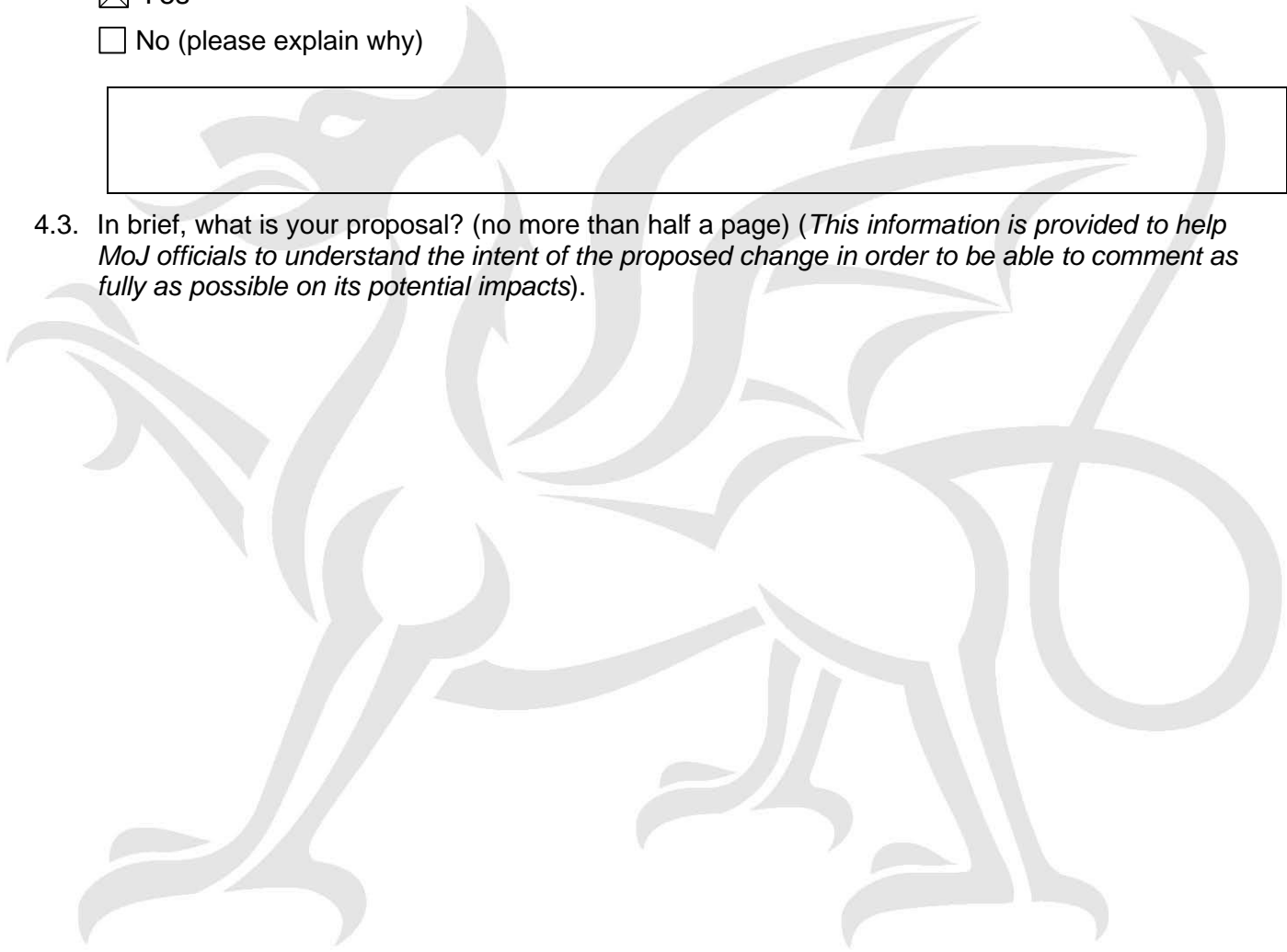
- 4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;  
b) the Justice Policy lead if known.

- 4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

Yes

No (please explain why)

- 4.3. In brief, what is your proposal? (no more than half a page) *(This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts).*



Legislation is required for the purpose of establishing a unified process for the consenting of the development of infrastructure in Wales and in Welsh waters. This primary legislation would create a bespoke and flexible consenting process for infrastructure projects in Wales, detaching their consenting from current arrangements and into a new form of consent, which contains the full range of authorisations required to enable a development. This would simplify the process for developers, communities and consultees as the current procedures often vary according to the different consenting regimes.

The new form of consent will be known as an 'Infrastructure Consent' ("IC") for development or works with the objective of constructing and/or changing use to create a 'Significant Infrastructure Project' ("SIP"). The categories of infrastructure which the process is mainly expected to capture are energy, transport, waste and water, with minimum thresholds requiring only the most significant of such infrastructure to be captured by the process.

As decisions made on an IC will be made by the Welsh Ministers, all decisions will be final. The only available avenue for challenge will be through the courts, which is the current mechanism for planning appeals and applications called in by the Welsh Government. This provides a 6 week period by which the decision may be challenged in the High Court under judicial review.

Local Planning Authorities are proposed to be the main onshore enforcement authority, with the Welsh Ministers as the relevant authority offshore. Enforcement provisions will be mainly based on existing enforcement provisions for large infrastructure developments within the Planning Act 2008, and partially the Town and Country Planning Act (TCPA) 1990 and the Local Government Act 1972. The proposed offences and civil proceedings are set out in further detail within this form.

Current consenting regimes have differing levels of consistency and the processes are spread over a series of Acts which have been modified significantly, which can be confusing for the user and duplicate work. This can significantly increase the costs of applications and can act as a barrier to bringing forward proposals and cause frustration and confusion.

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

4.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it?

It is anticipated that the proposed consenting regime will be fully operational by Mid-2025.

The monitoring and evaluation of the legislation will be undertaken in a number of ways including:

- Research, evaluation and data collection techniques;
- Evaluation project within 3 years of implementation of the regime to measure outcomes;
- Statutory targets set for the determination of applications for Infrastructure Consent;
- Formal monitoring of Planning and Environment Decisions Wales (PEDW) in relation to Infrastructure Consent applications.



4.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

No.

4.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

The aspects of the Bill covered in this JSII will be brought into force by commencement order(s). Subordinate legislation in relation to offences will be subject to the negative procedure. There is no procedure for the statutory instrument in section 82(4) [J511(4)].

4.7. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

- a) It is anticipated that all aspects of the legislation to enable the new consenting regime to operate will be in force by Mid-2025. This is dependent on the date of Royal Assent.
- b) This is unknown as this will depend on compliance with the various powers but would not be before the consenting regime is operational.

4.8. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

The persons affected by these provisions include applicants, the landowner (if not the applicant), any occupier of the land and any person carrying out operations on the land or using it for any purpose.

The proposals will give local planning authorities powers to undertake enforcement action, including rights to enter land and issuing notices.

The proposals will give Welsh Ministers powers to undertake enforcement action, including rights to enter land, issuing notices, applying for injunctions and creating offences. The creation of offences is limited to being in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour.

4.9. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland

Other (Please Specify)

The legislation will only apply to Wales.

4.10. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

The provisions will apply to both those resident to, and those living outside of Wales, as enforcement action is essentially taken out against the landowner, applicant, or those undertaking any unauthorised works regardless of residence. This reflects the current legislative approach.

A communications plan supporting the Bill outlines the various methods to ensure relevant stakeholders are aware of the legislation and its implications for them.

4.11. What are the options under consideration and how does this change the existing situation?

There are 4 options under consideration, which are set out below:

Option 1 - Do nothing. Applications for infrastructure to be determined according to the current legislative arrangements. No change to the current justice system, this option would retain a fragmented consenting regime which does not provide the one-stop shop the development industry seeks.

Option 2 – Establish a new form of ‘Welsh Infrastructure Consent’ for development or works with the objective of constructing and/or changing use to create a ‘Welsh Infrastructure Project’. This is the preferred option and the details of this are included in this form.

Option 3 – Establish an independent consenting body to determine ‘Welsh Infrastructure Consents’. This option would use the same approach to the justice system as Option 2.

Option 4 – Establish a streamlined regime to be determined by a consenting unit within Welsh Government. There would be no change to the current justice system in this option.

The anticipated scale of impact is anticipated to be minimal due to nature and scale of Infrastructure Consent applications. This is discussed in more detail in the sections below.

4.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

It is proposed that disputes in relation to compensation including:

- Whether compensation should be paid;
- How much compensation should be paid;
- Apportionment of compensation;
- Compensation in relation to damage to land or property.

are to be referred to and dealt by the Upper Tribunal.

## Criminal Offences and Civil Penalties and Sanctions

4.13. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

4.14. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

Four of the offences are proposed to be triable either way, see section 4.17 below. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime. The proposed approach reflects the existing legislation in the Planning Act 2008, TCPA 1990 and the Local Government Act 1972 because enforcing authorities are familiar with those existing processes, there would be no need to train those authorities in enforcing authorities in dealing with different types of offence, and those existing methods of enforcement have been relatively successful to date in acting as deterrents in the context of major infrastructure projects. The changes from summary only to triable either way reflect the analysis undertaken following the Law Commission report for the consolidation of planning law in Wales<sup>1</sup>.

4.15. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action? Please also include the anticipated costs of enforcement and how it will be funded.

Local planning authorities and the Welsh Ministers will be responsible for undertaking enforcement action. There is not expected to be an increased need for enforcement action as the policy proposals seek to bring various existing consenting processes under one, consistent process. Therefore, there will likely be no change to levels of enforcement action already undertaken.

4.16. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

The proposed provisions replicate existing provisions in the Planning Act 2008 and TCPA 1990. We are not aware of any prosecutions under the existing legislation in relation to Developments of National Significance or Development Consent Orders.

The number is anticipated to be low, due to the potential size and scale of development captured under the unified consenting process resulting in few applications being submitted each year (estimated at around 5 per year) and the fact that any formal enforcement action undertaken via the planning system is generally a last resort (in the first instance, the enforcing authority would usually attempt to rectify and potential breaches of planning control through informal discussions).

4.17. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

This means that seven of the offences are summary only, to be heard by the Magistrates' court. Four of the offences are summary or indictment, to be heard either by the Magistrates or Crown Courts, we anticipate the vast majority of cases (if they do go court) would be heard in the Magistrates' Court.

<b>Proposed Offence</b>	<b>Proposed Mode of Trial</b>	<b>Existing legislation (Planning Act 2008 unless otherwise stated)</b>
26(5)[J225]	Summary	Same as 52(9)
26(6)[J225]	Summary	Same as 52(9)
41(6)[J042A]	Either Summary or Indictment	Change from summary to either way and removed power of imprisonment. s.250(3) (Local Government Act 1972)
104[J460]	Either Summary or Indictment	Same as s.160
105[J461]	Either Summary or Indictment	Same as s.161
109(2)[J465]	Summary	Same as s.165(2)
112(3)[J468]	Summary	Same as s.168
112(5)[J468]	Either Summary or Indictment	Change from summary to either way s.168
115(2)[J470]	Summary	Same as s.170(6)
120[J478]	Either Summary or Indictment	Same as s.171G (Town and Country Planning Act 1990)
125(6)[J450]	Summary	Same as s.53(5)
Sch.1 Para 30[J504s]	Summary	Same as Sch. 5 Para 32B
Sch. 3 Para 10[J]	Not applicable - disapplying offences	

4.18. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

**s.26(5)[j225]**

A person convicted of non-compliance with a notice requiring information about interests in the land, or providing false information is liable (on summary conviction) to a fine.

**s.26(6)[j225]**

A person convicted of providing false information to notice requiring information about interests in the land is liable (on summary conviction or conviction on indictment) to a fine.

**s.41(6)[J042A]**

A person convicted of non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document is liable (on summary conviction or conviction on indictment) to a fine.

**s.104[J460]**

A person convicted of undertaking development without the required infrastructure consent is liable (on summary conviction or conviction on indictment) to a fine.

**s.105[J461]**

A person convicted of breach of an infrastructure consent order or failure to comply with an infrastructure consent order is liable (on summary conviction or conviction on indictment) to a fine.

**s.109(2)[J465]**

A person who intentionally obstructs a person who has the right of entry is liable (on summary conviction) to a fine.

**s.112(3)[J468]**

A person convicted of non-compliance with an information notice within 21 days, unless they have a reasonable excuse is liable (on summary conviction) to a fine.

**s.112(5)[J468]**

A person convicted of providing false or misleading information when complying with a requirement of an information notice is liable (on summary conviction or on a conviction on indictment) to a fine.

**s.115(2)[J470]**

A person convicted of intentionally obstructing a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development, is liable (on summary conviction) to a fine.

**s.120[J478]**

A person convicted of non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it, is liable (on summary conviction or on conviction on indictment) to a fine. In determining the amount of the fine, the court must have regard to any financial benefit which has accrued or appeared to accrue to the person convicted.

**s.125(6)[j450]**

A person convicted of wilfully obstructing a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order is liable (on summary conviction) to a fine.

**Sch.1 Para 30[J504s]**

The creation of offences (under Sch. 1 Para 30) in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour would be liable (on summary conviction) to a fine not exceeding level 3 on the standard scale. The person would not be liable to imprisonment.

5.

## Summary Table

Proposed Offence	Proposed Fine	Existing legislation (Planning Act 2008 unless otherwise stated)
26(5)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52(6)
26(6)[J225]	Unlimited	Change from not exceeding level 5 on standard scale. s.52 (7)
41(6)[J042A]	Unlimited	Change from not exceeding level 3 on standard scale. s.250 (Local Government Act 1972)
104[J460]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.160
105[J461]	Unlimited	Change from not exceeding 50,000 for summary trial, no change for trial by indictment. s.161
109(2)[J465]	Unlimited	Same 165(2)
112(3)[J468]	Unlimited	Same 168
112(5)[J468]	Unlimited	Change from not exceeding level 5 on standard scale. s.168
115(2)[J470]	Unlimited	Same as 170(6)
120[J478]	Unlimited	Same as 171G (Town and Country Planning Act 1990)
125(6)[J450]	Unlimited	Same as 53(5)
Sch.1 Para 30[J504s]	Not exceeding level 3 on standard scale	Same as Sch. 5 Para 32B

5.1. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

The proposed offences and the existing legislation that they are based upon are set out in the table below. See also section 4.19.

<b>Proposed Legislation Section</b>	<b>Existing Legislation based on</b>	<b>Offence</b>
26(5) [J225]	52(6) Planning Act 2008	Non-compliance with a notice requiring information about interests in the land
26(6)[J225]	52(7) Planning Act 2008	Providing false information to notice requiring information about interests in the land
41(6) [J042A]	250(2) – (3) Local Government Act 1972	Non-compliance with a summons to a local inquiry, or they alter, suppress, conceal or destroy a required document.
104 [J460]	160 Planning Act 2008	Undertaking development without the required infrastructure consent.
105 [J461]	161 Planning Act 2008	Breach of an infrastructure consent order or failure to comply with an infrastructure consent order.
109(2) [J465]	165(2) Planning Act 2008	Intentional obstruction of a person who has the right of entry.
112(3) [J468]	168(1) Planning Act 2008	Non-compliance with an information notice within 21 days, unless they have a reasonable excuse.
112(5)[J468]	168(4) Planning Act 2008	Providing false or misleading information when complying with a requirement of an information notice.
115(2) [J470]	170(6) Planning Act 2008	Intentional obstruction of a person who has the power to enter the land and take steps, following the period within a notice of unauthorised development.
120 [J478]	171G Town and Country Planning Act 1990	Non-compliance with a temporary stop notice, which may be in relation to one or more period for the same notice, and they could not prove they did not know or reasonable be expected to know about it.
125(6) [J450]	53(5) Planning Act 2008	Wilful obstruction of a person who is authorised by the Welsh Minister to enter land in connection with an infrastructure consent order
Sch. 1 Para 30 [J504s]	Sch.5 Para 32B Planning Act 2008	Creation of offences in connection with non-payment of tolls, fares or other charges, failure to give person's details relating to penalty fares, enforcement of byelaws or construction, improvement, maintenance or management of a harbour. This is limited by s.58(7)[J504(7)] which means that an Infrastructure Consent Order cannot create an offence, give a power to create an offence or change an existing power to create offences.
Sch. 3 Para 10	58(4) & 118(2) Historic Environment (Wales) Bill as introduced 4 July 2022.	Exception to offences of damaging certain monuments of special historic interest. Disapplication of offence of intentionally damaging a listed building.

5.2. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.





The equivalent existing power for offences is set out in the table above (para 4.19). The impacts to Civil proceedings are set out below:

Proposed Legislation Section	Existing Legislation based on	Civil proceedings
92[J139]	Sch. 6 Para 7 Planning Act 2008	Compensation - Disputes in relation to apportionment of costs as a result of a revocation made to the Upper Tribunal
95[J142]	Sch. 6 Para 7 Planning Act 2008 (varied)	Compensation - Disputes in relation to compensation for revocation made to the Upper Tribunal
98[J513]	118 Planning Act 2008	Legal challenges relating to applications for orders granting development consent
100(5)[J207]	106C Town and Country Planning Act 1990	Legal challenges relating to infrastructure consent obligations.
103(4)[J601]	152 Planning Act 2008	Compensation in case where no right to claim in nuisance
108[J464]	164 Planning Act 2008	Power for a justice of the peace to issue a warrant to enable entry to land for enforcement purposes.
109(6)[J465]	165(5) Planning Act 2008	Rights of entry – disputes in relation to compensation for rights of entry
114[J472]	170 (via regs under (4)) Planning Act 2008 s.276, 289, 294 Public Health Act 1936	Execution of works required by notice of unauthorised development – order requiring steps to be taken in relation to a notice of unauthorised development
122[J481]	171 Planning Act 2008	Injunctions – against an actual or expected activity which is an offence under j460 or j461
124(4)[210]	95(4)&(5) Planning Act 2008 250 Local Government Act 1972	Orders relating to costs of parties on examination proceedings and recovery of costs.
125(9)[J450]	53(8) Planning Act 2008	Rights of entry – disputes over costs, damage to land

Creation of the offences and civil proceedings is considered to be both proportionate and necessary to deliver the Infrastructure Consent and Planning (Wales) Bill objectives. The proposed penalties reflect existing legislation in the Planning Act 2008, the TCPA 1990, the Local Government Act 1972 and the Public Health Act 1936. The proposals are to bring together existing consenting processes under one, consistent process and therefore the proposed approach would redirect existing proposals into a new consenting regime which would otherwise be subject to the offences and penalties within the existing legislation as outlined in this form. It is therefore considered that this would not result in additional costs to the justice system. The approach taken in s.124(4) reflects the powers in the Planning Act 2008 and the Local Government Act 1972, reflects the drafting style for the equivalent provisions in the emerging Historic Environment (Wales) Bill<sup>2</sup>, which is currently in the Senedd to ensure consistency and reflect modern drafting.

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- 5.3. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

The impact on an individual found guilty reflects the current situation for the planning related offences these are based upon, including criminal record, fines etc.

- 5.4. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

There is a duty for the public sector in the infrastructure consenting process under the Bill, including enforcement. There is the opportunity for individuals or businesses to challenge the process using judicial review.

## 6. HM Courts & Tribunals Service and the Welsh Tribunals Service

### Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 6.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

It is anticipated that there is unlikely to be an impact on the number of cases being taken to court or through the Upper Tribunal due to the proposals seek to bring various existing consenting processes under one, consistent process.

- 6.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No  
 Yes (please provide details)

The proposals are not introducing a new duty in this manner.

### Appeal Rights

- 6.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

The Bill allows appeals to the Administrative Court through judicial review as there are numerous decisions in the Bill made by a public body. The Bill also allows for a reduction of time limits in which to bring proceedings for JR contained in CPR 54(1) from 3 months to 6 weeks, in line with the planning system. Although this is a new right of appeal under the legislation, the effect is that the proposals seek to bring various existing consenting processes under one, consistent process. These will be handled by HM Courts & Tribunals Service rather than Welsh Tribunals as is currently the case.

- 6.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No.

## Alternative Dispute Resolution

6.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

This already occurs in planning enforcement related matters. Formal enforcement action is often considered to be a 'last resort' by the enforcing authority, who will often use more informal / mediation tactics, depending upon the scale / type of offence. For example, if a local planning authority is notified of an unauthorised development, they may consider it more appropriate in that particular circumstance to request the developer submit a retrospective planning application, rather than immediately issue an enforcement notice, or any other type of enforcement action. However, they are also provided with the tools necessary if it is considered development should stop immediately for certain reasons, such as temporary stop notices.

## Prosecution and Enforcement

6.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

It would likely be the Local Planning Authority that would bring any prosecutions. The Counsel General will also have powers to bring any prosecutions under section 67 of the Government of Wales Act 2006.

6.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes, an individual can apply to High Court Enforcement Offers to recover that debt which reflects current practice.

## HMCTS Procedural Rules, Sentencing and Penalty Guidelines

6.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

The Bill allows for a reduction of time limits in which to bring proceedings for judicial review contained in Civil Procedure Rule 54(1) from 3 months to 6 weeks, in line with the planning system. The timescales for the implementation and operation of the proposals are set out in section 4.7.

6.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

No.

## 7. Legal Aid and Court Fees

7.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- legal representation and legal advice in order to secure a fair hearing of their case
- associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

It is unlikely that Legal Aid would be available, however this would depend on the complexity of the case. The award of costs would be issued by the judge. Estimates of complexity, length and costs of cases are no possible due to the current understanding that there have been no equivalent prosecutions or enforcement in relation to Developments of National Significance and Development Consent Orders which are the regimes the proposed powers are based upon. It is also estimated that there would only be around five Infrastructure Consent applications a year and therefore enforcement figures are likely to be low.

7.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

7.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

## 8. Prisons and Offender Management Services

### Impact on HM Prison Services

8.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

No.

8.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No.



## 9. Main Justice System Impacts Identified

### 9.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	---	---	---		
	---	---	---		
	---	---	---		
Civil Penalties	---	---	---		
	---	---	---		
	---	---	---		
HM Courts & Tribunals Services	---	---	---		
	---	---	---		
	---	---	---		
Welsh Tribunals	---	---	---		
	---	---	---		
	---	---	---		

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Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Legal Aid	_____	_____	_____		
	_____	_____	_____		
	_____	_____	_____		
Notes:-					

**9.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):**

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) <sup>3</sup> (please provide numeric estimate and min-max range)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Notes:					

**Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.**

<sup>3</sup> The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>

Julie James AS  
Y Gweinidog Newid Hinsawdd

27 Medi 2023

Annwyl Julie,

Y Bil Seilwaith (Cymru) – gohebiaeth yn dilyn y sesiwn ar 25 Medi 2023

Diolch unwaith eto am ddod i'n cyfarfod ar 25 Medi 2023 i drafod y Bil Seilwaith (Cymru).

Fel y nodwyd ar ddiwedd y sesiwn, mae yna hefyd nifer o gwestiynau y byddem wedi hoffi eu gofyn ond nid oedd amser i wneud hynny. Felly, byddwn yn ddiolchgar pe gallech ymateb i'r cwestiynau yn yr atodiad erbyn 10 Hydref 2023.

Gwnaethoch hefyd ymrwymo i roi'r wybodaeth a ganlyn i ni, y byddem hefyd yn ddiolchgar i'w chael erbyn 10 Hydref:

- sut y bydd y Bil yn galluogi Llywodraeth Cymru i ymgymryd â rhagor o bwerau datganoledig a pha feysydd polisi y bydd y pwerau hynny'n eu cwmpasu;
- asesiad Llywodraeth Cymru o effaith y Bil ar gyfiawnder a'r ohebiaeth berthnasol â'r Weinyddiaeth Gyfiawnder.

Yn gywir,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Cadeirydd



## Atodiad

1. Mae adran 57 yn ymwneud â rhoi neu wrthod cydsyniad seilwaith. Yn eich **llythyr** rydych yn datgan eich bod yn rhagweld y bydd is-ddeddfwriaeth a wneir o dan yr adran hon yn nodi y bydd yn rhaid i Weinidogion Cymru "wneud gorchymyn sy'n cynnwys mân newidiadau yn unig". Gwnaethoch ddatgan hefyd "tra bod cyfeiriad ar wyneb y Bil at y ffaith bod newidiadau i gais yn rhai "perthnasol", bydd y rheoliadau'n rhoi eglurhad y dylai unrhyw newidiadau a wneir...ond fod yn fân eu natur". Os yw newidiadau i fod yn fân, pam y mae'r pŵer wedi'i ddrafftio'n llawer ehangach nag sy'n angenrheidiol i gyflawni ei ddiben?
2. Mae adran 82 yn ymwneud â chyhoeddi a'r gweithdrefnau sydd ynghlwm wrth orchmynion cydsyniad seilwaith. Yn rhinwedd paragraff 29 o Atodlen 1, gall gorchymyn greu trosedd. Bydd gorchymyn o'r fath yn ddarostyngedig i'r weithdrefn graffu negyddol. Pam nad yw'r weithdrefn gadarnhaol wedi'i chysylltu â'r pŵer hwn?
3. Mae adran 88 yn ymwneud â'r weithdrefn ar gyfer newid a dirymu gorchmynion cydsyniad seilwaith. Pa bersonau fydd bob amser yn cael hysbysiad ynghylch newid neu ddirymu gorchymyn cydsyniad seilwaith o dan adran 88(6)?
4. Pa awdurdodau cyhoeddus yr ymgynghorir â hwy o dan adran 126(1) a pham nad ydynt wedi'u cynnwys ar wyneb y Bil?
5. Yng nghwestiwn 6 yn ein **llythyr** atoch, fe wnaethom gwestiynu'r gallu i "ddeddfu'n gyflym" fel cyfiawnhad dros gymhwyso'r weithdrefn negyddol i nifer o bwerau dirprwyedig yn y Bil. Gwnaethoch ymateb mewn perthynas ag adran 127(2)(c) a 127(4). A allwch gadarnhau, er mwyn i bawb gael gwybod, sut mae'r angen i weithredu "yn gyflym" yn berthnasol i'r dewis o weithdrefn ar gyfer y pŵer cyfarwyddo yn adran 127(3)?
6. Mae adran 128 yn cynnwys pŵer i Weinidogion Cymru gyfarwyddo nad yw gofynion o dan y Bil yn gymwys o dan amgylchiadau penodol. Pam ei bod yn briodol cynnwys y pŵer hwn i wneud rheoliadau yn hytrach na gwneud darpariaeth ar wyneb y Bil sy'n nodi'r amgylchiadau penodol?
7. Yn eich llythyr dyddiedig 11 Medi, mae eich ateb mewn perthynas ag adran 128 yn datgan "ni fwriedir, o dan unrhyw amgylchiadau, i'r is-ddeddfwriaeth ei gwneud yn bosibl i roi cyfarwyddyd i ddatgymhwyso gofynion sy'n amddiffyn hawliau neu'n sicrhau na chaiff unrhyw droseddau eu cyflawni". A fydd y ddarpariaeth hon yn y Bil, os a phan gaiff ei deddfu, yn atal Gweinidog yn y dyfodol rhag defnyddio'r pŵer hwn i ddatgymhwyso gofynion sy'n amddiffyn hawliau?
8. Mae adran 137 yn darparu bod cyfyngiadau yn berthnasol i wneud rheoliadau a gorchmynion o dan y Bil. Beth yw diben drafftio'r ddarpariaeth hon a pham y mae wedi'i chynnwys o ystyried gweithrediad adran 154 o Ddeddf Llywodraeth Cymru 2006? Pam mae adran 137 ond yn cyfeirio at rai o ddarpariaethau Atodlen 7B i Ddeddf 2006 ac nid at eraill?

9. Os caiff y Bil ei basio a'i ddeddfu, pryd yr ydych yn rhagweld y bydd holl ddarpariaethau'r Bil a'r is-ddeddfwriaeth sy'n cyd-fynd ag ef mewn grym yn llawn?

10. Yn eich barn chi, a fydd angen deddfwriaeth sylfaenol pellach yn y dyfodol agos ym maes cynllunio? Beth yw'r amserlenni ar gyfer paratoi a chyflwyno'r ddeddfwriaeth arfaethedig hon?

11. Pa ystyriaeth a roddwyd i hygyrchedd ac aliniad deddfwriaeth yn y maes hwn, yn enwedig o ystyried bod y dirwedd ddeddfwriaethol yn y dyfodol yn cynnwys Bil cydgrynhoi cynllunio?

Elin Jones AS  
Y Llywydd  
Cadeirydd y Pwyllgor Busnes

6 Hydref 2023

Annwyl Lywydd

**Memorandwm Cydsyniad Deddfwriaethol Atodol (Memorandwm Rhif 4) ar y Bil Ffyniant Bro ac  
Adfywio**

Byddwch yn ymwybodol bod y Pwyllgor Llywodraeth Leol a Thai wedi bod yn trafod memoranda cydsyniad deddfwriaethol mewn perthynas â'r Bil Ffyniant Bro ac Adfywio, a'r ffaith ein bod wedi cyhoeddi adroddiad ar y memoranda gwreiddiol, diwygiedig ac atodol ar 13 Chwefror. Byddwch hefyd yn ymwybodol inni ysgrifennu atoch ar 18 Mai, yn egluro ein bod wedi ystyried Memorandwm Cydsyniad Deddfwriaethol Atodol (Rhif 3) ("Memorandwm Rhif 3") a'n bod wedi penderfynu peidio ag adrodd arno. Roedd hyn oherwydd bod gwelliannau a nodir ym Memorandwm Atodol Rhif 3 yn ymwneud ag adroddiadau canlyniadau amgylcheddol nad ydynt yn dod o fewn cylch gwaith y Pwyllgor.

Ar 12 Medi, cytunodd y Pwyllgor Busnes i'n gwahodd ni, a thri phwyllgor arall, i ystyried Memorandwm Cydsyniad Deddfwriaethol Atodol (Rhif 4) ("Memorandwm Rhif 4") ac i gyflwyno adroddiad erbyn 13 Hydref. Rydym wedi ystyried Memorandwm Rhif 4 ac yn nodi bod y gwelliannau y manylir arnynt ym Memorandwm Rhif 4 yn ymwneud â'r cenadaethau ffyniant bro, cynllunio a'r amgylchedd.

Ar y sail honno, a'r ffaith ei fod wedi cael ei gyfeirio at bwyllgorau eraill a allai fod â mwy o ddiddordeb yn y gwelliannau hyn, gwnaethom benderfynu peidio ag adrodd ar y memorandwm.

Rwy'n anfon copi o'r llythyr hwn at y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad; Pwyllgor yr Economi, Masnach a Materion Gwledig, a'r Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith.

Yn gywir

John

John Griffiths AS

Cadeirydd y Pwyllgor Llywodraeth Leol a Thai

Croesewir gohebiaeth yn Gymraeg neu'n Saesneg.

We welcome correspondence in Welsh or English.





Huw Irranca-Davies AS  
Cadeirydd  
Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

6 Hydref 2023

Annwyl Huw,

Yn fy ymddangosiad gerbron eich pwyllgor ar 18 Medi, cytunais y byddwn yn ysgrifennu atoch i gadarnhau'r dull strategol y mae Llywodraeth Cymru am ei ddilyn yn awr mewn perthynas â'r Undeb Ewropeaidd.

Ers i'r DU ymadael â'r Undeb Ewropeaidd ddechrau 2020, cynnal proffil Cymru fel gwlad Ewropeaidd fu'r nod. O 2016 ymlaen, ailadroddwyd y neges dro ar ôl tro fod Cymru yn wlad Ewropeaidd, a bydd yn parhau felly – nid yw'r ffaith a ydyw yn rhan o'r UE neu beidio yn newid hyn. Mae Llywodraeth Cymru o'r farn ei bod yn debygol y bydd y DU yn datblygu ffurf mwy cynhyrchiol ar Brexit, a byddai'n ddymunol pe bai'n gwneud hynny. Wrth i hynny ddigwydd, dylai Llywodraeth Cymru fod mewn sefyllfa dda i elwa i'r eithaf mewn ffyrdd ymarferol ar y manteision a ddaw yn sgil gwella'r berthynas.

Rydym wedi ymrwymo yn ein Rhaglen Lywodraethu i gadw ein swyddfa ym Mrwsel ar gyfer yr union ddiben hwn. Yn ystod yr 20 mlynedd cyn Brexit, gweithiodd Llywodraeth Cymru i feithrin gwerth yn yr UE fel cyfranogwr ymroddedig. Ers Brexit, rydym wedi mynd ati gydag ymdrech ac egni i gadw'r gwerth hwnnw. Mae Swyddfa Brwsel yn ein helpu i gynnal cysylltiadau ac yn sicrhau ein bod yn cael yr wybodaeth ddiweddaraf am y datblygiadau hynny yn yr UE y mae gennym fuddiant ynddynt o hyd.

I gyd-fynd â'r gwaith hwn, penodwyd Derek Vaughan i weithredu fel cynrychiolydd, a chafodd fandad gan Lywodraeth Cymru i gynnal perthnasoedd lefel uchel ym Mrwsel. Mae Derek wedi tynnu ar ei brofiad a'i rwydweithiau i sicrhau bod Cymru yn dal i fynnu sylw ein rhanddeiliaid gan gynnwys Aelodau o Senedd Ewrop, y Comisiwn a phenderfynwyr a llunwyr barn eraill. Credwn fod gwaith Derek, ochr yn ochr â'n swyddogion eraill, wedi bod o fudd gwirioneddol i broffil Cymru ar adeg pan fo delwedd y DU yn gyffredinol, a bod yn ddi-flewyn ar dafod, wedi dechrau llithro.

Rwyf innau wedi ei gwneud hi'n flaenoriaeth i ymweld â Brwsel unwaith y flwyddyn o leiaf ac rwyf wedi annog y Gweinidogion eraill i ymweld pan fydd cyfleoedd defnyddiol yn codi.

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

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

Roeddwn yn falch o weld Gweinidog yr Economi yn annerch Pwyllgor Polisi Rhanbarthol Senedd Ewrop yn gynharach eleni. Rwyf o blaid gweld aelodau – waeth pa blaid y maent yn perthyn iddi – yn ymweld â Brwsel a mannau eraill fel rhan o'u gwaith. Fel gwlad, mae'n rhaid inni wneud popeth yn ein gallu i anfon arwyddion cadarnhaol ynglŷn ag ymwneud Cymru ag Ewrop.

Y tu hwnt i Frwsel, rydym yn bwrw ati i feithrin partneriaethau ledled Ewrop a'u cynnal. Ym mis Awst, er enghraifft, ymwelais â Llydaw ar gyfer mynd i gyfarfod dwyochrog ac i ymgysylltu â'r Fforwm Celtaidd sydd newydd ei sefydlu rhwng y gwledydd a'r rhanbarthau. Rydym yn cymryd rhan mewn rhwydweithiau rhanbarthol aml-aelod eraill megis Cynhadledd y Rhanbarthau Morol Ymylol (CPMR), Menter Vanguard (y mae Cymru yn ei harwain ar hyn o bryd), ac mae gennym broffil uchel yn y gymuned "leithoedd Llai eu Defnydd". Mae gennym sawl perthynas ddwyochrog â gwledydd a rhanbarthau gan gynnwys Iwerddon, Llydaw, Gwlad y Basg, Fflandrys ac eraill. Yn ogystal â'r gynrychiolaeth ym Mrwsel, mae gennym swyddogion sydd wedi'u lleoli yn Nulyn, Paris a Berlin sy'n gweithio ar fasnach a materion eraill ochr yn ochr â'u cyfeillion yn llysgenadaethau'r DU. Rydym yn annog ymweliadau arwyddocaol â Chymru o'r tu allan gan ein partneriaid a'n ffrindiau Ewropeaidd, ac yn derbyn ymweliadau o'r fath, yn rheolaidd iawn. Rydym yn annog masnachwyr i ddatblygu allforion i Ewrop, a'u cynnal, ac mae gan Gymru bolisi cadarn o hyd o fod yn agored i fuddsoddwyr.

Aeth perthynas Llywodraeth y DU â'r UE drwy gyfnod hynod negyddol a niweidiol. Yn fwy diweddar, mae Fframwaith Windsor a sicrhau mynediad i'r DU at y rhaglen Horizon yn gamau cymedrol i'r cyfeiriad cywir. Fodd bynnag, mae'n rhaid imi roi ar gofnod fater sy'n peri gofid imi, sef y ffaith bod arloeswyr ac ymchwilwyr wedi colli sawl blwyddyn o fynediad at Horizon o ganlyniad i sefyllfa wan Llywodraeth y DU.

Hoffwn weld perthynas rhyngom a'r UE sy'n mynd cryn dipyn ymhellach. Hoffai Llywodraeth Cymru, er enghraifft, gael mynediad at raglen Erasmus yr UE. Roeddem yn arbennig o siomedig fod Llywodraeth y DU wedi gwrthod cynnwys hyn yn ei chytundeb ymadael. Rydym yn gobeithio y byddwn yn cael cymryd rhan yn Erasmus a rhaglenni eraill ymhen rhai blynnyddoedd. Yn y cyfamser, mae ein rhaglen Taith yn hwyluso trefniadau cyfnewid i'r ddau gyfeiriad ar gyfer pobl ifanc ledled Ewrop.

Mae hefyd yn destun gofid inni fod Llywodraeth y DU yn ymddangos yn benderfynol o gefnu ar fesurau sy'n deillio o'r UE sy'n diogelu ein dŵr a'n hamgylchedd. Mae Llywodraeth Cymru yn benderfynol, yn y meysydd hynny lle y mae gennym y pwerau, o gynnal lefelau diogelu'r amgylchedd ar gyfer ein tir, ein dŵr a'n haer sy'n cyfateb i rai'r UE o leiaf. Yn y dyfodol, gobeithiwn weld Llywodraeth y DU a fydd yn cynnig negodi â'r UE ar gytundeb milfeddygol i hwyluso symud da byw a bwyd ar draws ein ffiniau allanol.

I grynhoi, mae Llywodraeth Cymru yn meithrin perthynas gadarnhaol i Gymru ag Ewrop. Credwn fod hyn yn ffordd o fuddsoddi yn y dyfodol. Rydym yn croesawu cefnogaeth y Pwyllgor i'r gwaith hwn ac, pan fydd y cyfle yn codi, rydym yn annog pob aelod i gyfrannu at gynnal cysylltiadau cadarnhaol ag Ewrop.

Yn gywir,



**MARK DRAKEFORD**