

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



Llywodraeth Cymru
Welsh Government

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Huw Irranca-Davies MS
Cadeirydd, Y Pwyllgor Deddfwriaeth, Cyfiawnder
a'r Cyfansoddiad
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3 Hydref 2023

Annwyl Huw,

Diolch am eich dau lythyr ar 27 Medi a'r cwestiynau a gyflwynwyd gan y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad yn ymwneud â Bil Seilwaith (Cymru). Rwy'n falch o ddarparu fy ymateb sydd ynghlwm yn Atodiad A.

Yn ogystal, rwy'n atodi ffurflen Nodi'r Effaith ar y System Gyfiawnder (JSII) Llywodraeth Cymru ar gyfer y Bil, fel y'i hystyriwyd gan y Weinyddiaeth Gyfiawnder.

Hyderaf fod yr ymatebion yn Atodiad A yn ateb eich cwestiynau. Fodd bynnag, os oes unrhyw gwestiynau ychwanegol neu feysydd sydd angen eglurhad, rwy'n hapus i ddarparu rhagor o wybodaeth yn ysgrifenedig.

Rwy'n anfon copi o'r llythyr hwn at Gadeirydd y Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith er gybodaeth.

Yn gywir,

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.

Atodiad A

Cwestiwn 1

Mae adran 57 yn ymwneud â rhoi neu wrthod cydsyniad seilwaith. Yn eich llythyr atom ar 11 Medi 2023, 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?

Ymateb:

Y bwriad yw y bydd is-ddeddfwriaeth yn pennu y caiff gorchymyn a wneir gan Weinidogion Cymru gynnwys mân newidiadau yn unig i’r gorchymyn drafft y gwnaed cais amdano. Gall hyd yn oed mân newidiadau fod yn berthnasol mewn rhai ffyrdd ac felly mae’r drafftio yn briodol.

Cwestiwn 2

Mae adran 82 yn ymwneud â chyhoeddi a’r gweithdrefnau sydd ynghlwm wrth orchymynion 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?

Ymateb:

Mae’r Gorchymyn a wneir yn ymwneud â rhoi cydsyniad ar gyfer datblygiad unigol ac mae unrhyw drosedd yn berthnasol ac yn angenrheidiol ar gyfer rhoi’r cydsyniad. Mae’r troseddau y gellir eu creu gan Orchymyn Cydsyniad Seilwaith yn gyfyngedig iawn o ran cwmphas. Byddant yn cael effaith leol ac mae pwerau dedfrydu cyfyngedig a all fod ynghlwm wrthynt.

Oherwydd y prosesau cyn ymgeisio sydd wedi’u cynnwys yn y system, bydd angen i ymgeiswyr ymgysylltu â’r holl randdeiliaid a chymunedau lleol ynghylch unrhyw droseddau y maent yn dymuno eu cynnwys yn y Gorchymyn.

Un o’r agweddau y bydd yr awdurdod archwilio’n craffu arno yw priodoldeb unrhyw droseddau. Mae’r rhain yn darparu mesurau diogelu addas i sicrhau bod y pŵer hwn yn cael ei ddefnyddio’n briodol a bydd yn agored i Weinidogion Cymru roi gorchymyn heb droseddau sydd yn y gorchymyn y gwnaed cais amdano gan ddefnyddio’r pŵer yn adran 57 o’r Bil.

Cwestiwn 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)?

Ymateb:

Mae sawl llwybr posibl o ran y gallu i geisio diwygio neu ddirymu gorchymyn cydsyniad seilwaith, sy'n cyflwyno rhywfaint o gymhlethdod. Er enghraifft, gallai fod cais i ddirymu gorchymyn gan ymgeisydd neu Awdurdod Cynllunio Lleol. Fel dewis arall, mae gan Weinidogion Cymru y pŵer i ddiddymu gorchymyn yn unochrog.

Felly, mae'n anodd rhagweld pwy fyddai bob amser yn cael hysbysiad ynghylch diwygio neu ddirymu gorchymyn cydsyniad seilwaith.

Fodd bynnag, fel mater o gyfraith gyhoeddus a chyfiawnder naturiol, byddai gofyniad bob amser i roi hysbysiad i'r person a wnaeth gais yn wreiddiol am y gorchymyn cydsyniad seilwaith.

Yn seiliedig ar yr egwyddorion hyn o ran cyfraith gyhoeddus a chyfiawnder naturiol, daethpwyd i'r casgliad na fyddai angen gosod y gofyniad hwn ar wyneb y Bil.

Cwestiwn 4

Pa awdurdodau cyhoeddus yr ymgynghorir â hwy o dan adran 126(1) a pham nad dydynt wedi'u cynnwys ar wyneb y Bil?

Ymateb:

Bwriedir i'r rhestr o awdurdodau a chyrrff sydd i'w nodi yn ymgynghoreion statudol gael ei phennu mewn is-ddeddfwriaeth yn dilyn ymarfer ymgynghori, er mwyn sicrhau bod yr holl gyrff perthnasol yn cymryd rhan yn y broses. Fodd bynnag, rhagwelir y bydd llawer o'r awdurdodau a'r cyrrff yr ymgynghorir â hwy ar hyn o bryd fel rhan o'r broses Datblygiad o Arwyddocâd Cenedlaethol hefyd yn ymgynghoreion statudol at ddibenion y gyfundrefn gydsynio newydd hon pan fo datblygiad ar dir.

Rhagwelir yr ymgynghorir â Cyfoeth Naturiol Cymru ym mhob achos. Fodd bynnag, ymgynghorir â chyrrff cyhoeddus mwy arbenigol o dan amgylchiadau penodol. Er enghraifft, ymgynghorir â'r Weinyddiaeth Amddiffyn pan fo datblygiad wedi'i leoli o fewn parthau diogelu statudol, fel y'u cyflwynir o dan Gyfarwyddyd Cynllunio Gwlad a Thref (Meysydd Glanio wedi'u Diogelu, Safleoedd Technegol ac Ardaloedd Storio Milwrol) 2002, neu yn achos datblygiadau gwynt, pan fyddai gan unrhyw dyrbin uchafswm uchder blaen llafn o 11m neu fwy oddi ar lefel y ddaear a/neu ddiamedr rotor o 2.0m neu fwy.

Ystyrir bod y rhestr o ymgynghoreion statudol yn addas ar gyfer rheoliadau, yn hytrach na chael ei rhoi ar wyneb y Bil oherwydd y bydd gwybodaeth am ymgynghoriadau ag ystod eang o gyrff cyhoeddus yn cyflwyno lefel sylweddol o fanylion. Bydd angen iddi

hefyd fod yn hyblyg er mwyn ymateb i unrhyw newidiadau o ran gweithdrefnau neu gyfrifoldebau sefydliadol yn y dyfodol.

Cwestiwn 5

Yng nghwestiwn 6 yn ein llythyr atoch ar 27 Gorffennaf 2023, 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)?

Ymateb:

Mae adran 127(3) yn egluro y caiff cyfarwyddydau ymwneud â cheisiadau neu awdurdodau penodol neu â cheisiadau neu awdurdodau yn gyffredinol. Er enghraifft, caiff Gweinidogion Cymru roi cyfarwyddyd ar y ffordd y gwneir hysbysiad ar fath penodol o brosiect seilwaith yn sgil newidiadau i wefan lle mae'r gofrestr ceisiadau yn cael ei chynnal, neu ddiwygiadau i'r rhestr o ymgylchreolion statudol.

Byddai'n fuddiol i bob parti dan sylw fod unrhyw addasiadau yn cael eu gwneud yn brydlon, neu fel arall gall y broses barhau i beri baich diangen i'r rhai dan sylw. Bydd y gallu i weithredu'n gyflym yn helpu i sicrhau nad oes unrhyw oedi na dyblygu gwaith yn ddiangen.

Cwestiwn 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?

Ymateb:

Bwriad y gyfundrefn gydsynio a gyflwynir gan y Bil yw darparu un broses i'w defnyddio er mwyn cydsynio i ystod eang o ddatblygiadau seilwaith ac mewn ystod eang o amgylchiadau gwahanol.

Nodais yn y Datganiad o Fwriad Polisi pam mae angen y pŵer hwn arnom, ac oherwydd yr amrywiaeth eang o brosiectau ac amgylchiadau byddai lefel o hyblygrwydd o fudd mawr i'r broses.

Nid yw'r pŵer hwn heb ei reoli, mae'n gyfyngedig i feysydd a bennir mewn rheoliadau. Bydd hyn yn golygu y gall yr holl randdeiliaid ddylanwadu ar ble y dylid defnyddio'r pŵer hwn neu na ddylid ei ddefnyddio. Mae'n galluogi'r pŵer i ymateb i newidiadau yn y system, neu adlewyrchu tystiolaeth a ddaw i'r amlwg yn ystod gweithrediad y system. Rwyf o'r farn ei bod yn briodol defnyddio is-ddeddfwriaeth i gyfyngu ar y pŵer hwn yn ddarostyngedig i'r weithdrefn gadarnhaol ddrafft.

Cwestiwn 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 ddatgymhwysu 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 ddatgymhwysu gofynion sy'n amddiffyn hawliau?

Ymateb:

Mae'r pŵer i wneud cyfarwyddydau wedi'i gyfyngu i feysydd a bennir yn y Rheoliadau, gyda'r rheoliadau hyn yn ddarostyngedig i'r weithdrefn gadarnhaol ddrafft. Bydd yr ymgynghoriad a gwaith craffu gan y Senedd ar y rheoliadau hynny'n darparu mesurau diogelu priodol. Fel y soniais uchod, nid wyf yn credu ei bod yn bosibl nodi darpariaethau ar wyneb y Bil lle caniateir rhoi cyfarwyddyd, ond os oes gennych awgrymiadau ar gyfer gwelliannau i'r adran hon, byddwn yn hapus i'w hystyried.

Cwestiwn 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?

Ymateb:

Mae adran 137 o'r Bil yn nodi'r cyfyngiadau ar gwmpas y pwerau is-ddeddfwriaeth wrth wneud darpariaethau a allai roi swyddogaethau i un o Weinidogion y Goron, adran y llywodraeth neu awdurdod arall a gedwir yn ôl, neu addasu neu ddileu'r swyddogaethau'r hynny.

Mae'r cyfyngiadau ym mharagraffau 8, 10 ac 11 o Atodlen 7B i Ddeddf Llywodraeth Cymru 2006 a grybwyllir yn adran 137 o natur sylfaenol wahanol i gyfyngiadau eraill yn Atodlen 7B. Mae'r rhan fwyaf o gyfyngiadau yn Atodlen 7B i GOWA 2006 yn diystyru pethau yn llwyr. Mae'r cyfyngiadau ym mharagraffau 8, 10 ac 11 yn dweud na ellir gwneud rhai pethau oni bai bod cydsyniad yn cael ei sicrhau neu fod ymgynghoriad yn cael ei gynnal. Mae gan hyn ganlyniadau o ran y ffordd orau o sicrhau eglurder wrth ddrafftio darpariaethau yn Neddfau'r Senedd sy'n rhoi swyddogaethau i awdurdodau cyhoeddus yn gyffredinol, yn addasu neu'n dileu swyddogaethau awdurdodau cyhoeddus yn gyffredinol, neu'n rhoi pwerau i wneud y pethau hynny mewn rheoliadau.

Er y byddai adran 154 o Ddeddf Llywodraeth Cymru 2006 yn cael yr un effaith pe na bai adran 137 yn y Bil, ni fyddai'n bosibl gweithio allan o ddarllen y Bil, ar y cyd â GOWA 2006, a ellid defnyddio unrhyw bŵer yn y Bil sy'n ymddangos fel pe bai'n awdurdodi rhoi, addasu neu ddileu swyddogaethau, er mwyn rhoi swyddogaethau i awdurdodau a gedwir yn ôl, neu addasu neu ddileu'r swyddogaethau hynny.

Er mwyn i berson ddeall cwmpas y pwerau i wneud rheoliadau, byddai angen iddynt chwilio am dystiolaeth ynghylch a gafwyd cydsyniad ai peidio, neu a gynhaliwyd ymgynghoriad, ac os felly, byddai angen iddynt hefyd adolygu'r ohebiaeth rhwng Gweinidogion Cymru a Gweinidog perthnasol y Goron er mwyn deall yn llawn y ddarpariaeth y gellid ei gwneud mewn is-ddeddfwriaeth o dan y Bil.

Trwy gynnwys adran 137, mae rhychwant pŵer Gweinidogion Cymru i wneud is-ddeddfwriaeth yn glir o ddarllen y Bil yn unig, ac yn fwy hygyrch i ddefnyddwyr y deddfwriaeth.

Cwestiwn 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?

Ymateb:

Bydd egwyddorion y Bil (h.y. creu Prosiect Seilwaith Arwyddocaol) a'r pwerau i wneud rheoliadau i weithredu'r Bil yn dod i rym y diwrnod ar ôl i'r Bil gael Cydsyniad Brenhinol. Rydym yn rhagweld y bydd y cyfnod gweithredu yn cymryd blwyddyn, yn amodol ar ganlyniad ymgynghoriadau ar is-ddeddfwriaeth.

Cwestiwn 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 deddfwriaeth arfaethedig hon?

Ymateb:

Mae'r Bil hwn y tu allan i gynllunio Gwlad a Thref, fodd bynnag, nid oes unrhyw fwriad i gyflwyno unrhyw deddfwriaeth sylfaenol pellach ym maes cynllunio yn nhymor y Senedd hon ac eithrio'r Bil Cydgrynhoi.

Bydd y Bil Cydgrynhoi Cynllunio yn dwyn ynghyd ddarpariaethau o'r darnau lluosog o deddfwriaeth sy'n nodi'r fframwaith deddfwriaethol ar gyfer cynllunio yng Nghymru ar hyn o bryd. Y gobaith yw y bydd hyn yn galluogi pobl sy'n defnyddio'r system gynllunio yng Nghymru i gyfeirio at un deddf gyfangwbl ddwyieithog sy'n cynnwys yr holl gyfraith berthnasol. Rhagwelir y bydd y Bil Cydgrynhoi Cynllunio yn cael ei gyflwyno i'r Senedd yn ystod 2024.

Cwestiwn 11

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

Ymateb:

Mae'r Bil yn ddarn annibynnol o ddeddfwriaeth, ac felly mae'r iaith a ddefnyddiwyd wrth fynd ati i ddrafftio wedi ystyried hygyrchedd.

Bydd drafftio'r Bil yn sicrhau nad effeithir ar y system gynllunio bresennol na'r ddeddfwriaeth gysylltiedig i raddau helaeth.

Mae'r Bil yn cynnwys darpariaethau canlyniadol i ddiwygio'r ddeddfwriaeth bresennol er mwyn sicrhau aliniad o fewn maes cynllunio a seilwaith. Ni ellir defnyddio'r pwerau addasu canlyniadol hyn yn eang ac maent yn gyfyngedig. Ni ellir ei ddefnyddio i wneud unrhyw beth sy'n groes i ddarpariaethau'r Bil y bydd y Senedd wedi eu hystyried a'u cymeradwyo.

Bydd y Bil Cydgrynhoi Cynllunio yn ymgorffori unrhyw newidiadau i ddeddfwriaeth ehangach a wneir gan y Bil hwn sydd o fewn cwmpas y prosiect cydgrynhoi.

Cwestiwn 12 (mewn llythyr eglurhaol)

[esboniwch os gwelwch yn dda] 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?

Ymateb:

Mae'r Bil wedi'i gynllunio fel bod digon o hyblygrwydd i ystyried technoleg newydd a thechnoleg sy'n dod i'r amlwg neu pe bai'r Senedd yn cael cymhwysedd deddfwriaethol uwchlaw'r trothwyon presennol.

Nid oedd y cyfeiriad yn y Memorandwm Esboniadol at ddyheadau am ragor o bwerau datganoledig wedi'i fwriadu i gyfeirio at unrhyw faterion penodol, ond mae'n adlewyrchu bod y broses a sefydlwyd gan y Bil yn addas i'r diben ac yn sicrhau y gall Cymru ddelio â phrosiectau seilwaith ar raddfa fawr mewn modd amserol ac effeithiol.

Er hynny, mae fy llythyrau at Lywodraeth y DU yn nodi'n glir ddau faes y gallai'r Bil ymdrin â hwy.

Rhanbarth y môr mawr

Nid yw'r Bil yn ymestyn y tu hwnt i'r môr tiriogaethol, sydd oddeutu 12 milltir fôr (nm) o'r lan, gan mai dim ond cymhwysedd deddfwriaethol o ran 'Cymru', fel y'i diffinnir yn Neddf Llywodraeth Cymru, sydd gan y Senedd.

Mae Gweinidogion Cymru yn cadw cymhwysedd gweithredol ym mharth Cymru (ardal rhwng tua 12 a 200 nm o arfordir Cymru) i gydsynio i orsafoedd cynhyrchu ynni hyd at 350MW o dan y broses a nodir yn Neddf Trydan 1989. Felly, nid oes gwahaniaeth sylfaenol o ran 'pwyl' fydd yn cydsynio i orsaf gynhyrchu ar y môr – fodd bynnag bydd y weithdrefn yn wahanol gan ddibynnu ar le mae'r prosiect wedi'i leoli.

Roedd fy nghais am gymhwysedd deddfwriaethol yn y maes hwn er mwyn mynd i'r afael â'r mater hwn a galluogi'r Bil i weithredu'n effeithiol wrth symleiddio a moderneiddio'r broses gydsynio yn y rhanbarth hwn.

Storio batris

O ran storio ynni, mae cymhwysedd deddfwriaethol y Senedd pan fo'n ymwneud â chydysnio ynni wedi'i gapio ar 350MW (ac eithrio gwynt ar y tir).

Uwchlaw'r trothwy hwn y gyfundrefn Prosiect Seilwaith o Arwyddocâd Cenedlaethol y DU (NSIP) fyddai'r mecanwaith cydsynio. Fodd bynnag, yn 2020 tynnwyd storio o'r broses NSIP a arweiniodd at anghysondeb o ran gweithrediad y ddwy gyfundrefn.

Felly, pan fo cynllun sydd naill ai'n cynhyrchu trydan yn gyfan gwbl neu'n bennaf o storio yn fwy na 350MW, nid yw'n glir a fyddai gan y Senedd bŵer i ddeddfu ynghylch sut y cydsynnir i gynlluniau o'r fath. Byddai Gweinidogion Cymru, drwy Awdurdodau Cynllunio Lleol, yn cadw cymhwysedd gweithredol i ystyried cynlluniau o'r fath o dan Ddeddf Cynllunio Gwlad a Thref 1990 ar y tir, ond mae'n bosibl nad yw hynny'n briodol ar gyfer pob cynllun o'r fath.

Unwaith eto, roedd fy nghais i Lywodraeth y DU yn gofyn am eglurder yn y maes hwn.

Cwestiwn 13 (mewn llythyr dilynol)

[A allwch chi] 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 chydysniad deddfwriaethol ar gyfer y darpariaethau perthnasol yn y Bil.

Ymateb:

Cyfarfûm â'r Gweinidog Bowie ar 13 Medi 2023 yn dilyn y bleidlais yn y Senedd i atal cydsyniad ar gyfer Bil Ynni y DU. Ailadroddais fy mhryderon ynghylch Llywodraeth y DU yn deddfu ar faterion o fewn ein cymhwysedd datganoledig heb gydsyniad y Senedd. Fodd bynnag, roedd yn glir bod Llywodraeth y DU yn bwriadu parhau â hynt y Bil a'u bwriad i'r Bil gael Cydsyniad Brenhinol ym mis Hydref.

Yn ystod y cyfarfod, roeddwn yn glir bod Llywodraeth Cymru, o ran cyfeiriad polisi a nodir yn y Bil, yn cyd-fynd yn fras â Llywodraeth y DU. O ystyried hyn, pwysleisiais fy awydd i weithio'n adeiladol i weithredu'r Bil er mwyn sicrhau bod anghenion Cymru yn cael eu hystyried yn briodol. Nododd y Gweinidog Bowie ei uchelgais i weithio'n adeiladol gyda'r Llywodraethau Datganoledig a chyflawni'r gofynion yn y Bil ar gyfer ymgynghori cyn i reoliadau a pholisïau newydd gael effaith.



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

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 Wales¹.

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?

¹ Planning Law in Wales - Law Commission
Justice System Impact Identification (version 14 October 2022)

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.

Proposed Offence	Proposed Mode of Trial	Existing legislation (Planning Act 2008 unless otherwise stated)
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.

Proposed Legislation Section	Existing Legislation based on	Offence
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) Bill², which is currently in the Senedd to ensure consistency and reflect modern drafting.

- 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. (£) ³ (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.

³ 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>