

## **Developments of National Significance**

**Explanatory Memorandum to:**

**The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Amendment) (Wales) Regulations 2016.**

**This Explanatory Memorandum and Regulatory Impact Assessment has been prepared by the Department for Economy, Skills and Natural Resources of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.**

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Amendment) (Wales) Regulations 2016.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM  
Minister for Natural Resources  
2 February 2016

## **1 Description**

- 1.1 The Planning (Wales) Act 2015 makes provision, amongst others, to establish a new category of development eponymously named Developments of National Significance (“DNS”). This enables the planning applications for certain types of development to be made directly to the Welsh Ministers. The statutory instrument which is subject of this Explanatory Memorandum makes amendments to the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (“the Regulations”). Specifically, it makes amendments to one of the categories of development which is ascribed as DNS.

## **2 Matters of Special Interest to the Constitutional and Legislative Affairs Committee**

- 2.1 This Explanatory Memorandum relates to a Statutory Instrument which amends a Statutory Instrument which is not yet in force. The Regulations were laid on 3 December 2015 and, subject to the will of the Assembly, are due to come into force on 1 March 2016. Amongst other categories of development, the Regulations specify that energy generating projects which have an installed generating capacity of between 10MW and 50MW are to be captured as DNS.
- 2.2 Since the laying of the Regulations, the UK Government laid the following Orders on 14 January 2016, which, subject to the will of Parliament, are also due to come into force on 1 March 2016:
- The Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016; and
  - The Infrastructure Planning (Onshore Wind Generating Stations) Order 2016 (“the Orders”).
- 2.3 These Orders have the effect of moving the consenting process for onshore wind energy generating stations with a capacity of over 50MW from a regime established under the Planning Act 2008 into the planning system under the Town and Country Planning Act 1990, the latter is within the competence of the Welsh Ministers. The Orders will subsequently give the Welsh Ministers competence over the consenting of all onshore wind energy generating projects.
- 2.4 Immediate amendments are required to the Regulations to capture those projects above 50MW as DNS. Without the amendments, there would be an unusual situation whereby medium-large energy generation projects would be consented by the Welsh Ministers, while the smallest scale and the largest scale energy generation projects would be consented at the local level. Hence, there is the requirement to amend the Regulations immediately after they come into force.

### **3 Legislative Background**

- 3.1 Section 19 of the Planning (Wales) Act 2015 inserts section 62D (Developments of National Significance: applications to be made to Welsh Ministers) and section 62E (Notification of proposed application under section 62D) into the Town and Country Planning Act 1990. Section 62D makes provision for applications for Development of National Significance to be made directly to the Welsh Ministers rather than to a local planning authority. Section 62D defines DNS as those projects designated in the National Development Framework for Wales and those which are prescribed by regulations.
- 3.2 The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 specify the thresholds and criteria for which types of development qualify as DNS and consent for which must be applied for directly to the Welsh Ministers under section 62D of the Town and Country Planning Act 1990. The Regulations also prescribe a list of secondary consents which an applicant may apply for alongside an application for DNS, for consideration by the Welsh Ministers.
- 3.3 The UK Government laid the following Orders on 14 January 2016:
- The Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016; and
  - The Infrastructure Planning (Onshore Wind Generating Stations) Order 2016.
- 3.4 The above Orders relate to onshore wind energy generating stations. At present, all onshore wind generating stations which have an installed generating capacity of over 50MW are classified as Nationally Significant Infrastructure Projects and are consented by the UK Government as a Development Consent Order under the Planning Act 2008.
- 3.5 The Infrastructure Planning (Onshore Wind Generating Stations) Order 2016 amends the Planning Act 2008 such that no onshore generating stations which generate electricity from wind are to be consented under the regime specified in the Planning Act 2008. The Onshore Wind Generating Stations (Exemption) (England and Wales) Order makes a direction under section 36(4) of the Electricity Act 1989 to provide that the requirement for consent under that Act does not apply to onshore wind generating stations. The effect of the Orders is that all onshore wind generating stations are to be consented through the planning system (i.e. under the Town and Country Planning Act 1990) when in force. These Orders have an expected coming into force date of 1 March 2016, the same date as the 1 Statutory Instruments relating to DNS.

## 4 Purpose and intended effect of the provisions

- 4.1 Evidence suggests that the existing consenting regime is not effective in terms of producing quality decisions in a timely manner<sup>1</sup> for planning applications for proposed infrastructure development. Our evidence<sup>2</sup>, focussed particularly on development for renewable and low-carbon technologies, identifies a number of “constraining factors in the decision-making process”<sup>3</sup>. These include a lack of resources and technical expertise within LPAs, and the time taken by statutory consultees to respond and participate in the application process. The consequence is that infrastructure development is delayed, resulting in a negative impact on the economy and slow progress towards establishing a low-carbon economy through the building of renewable energy schemes.
- 4.2 To address the above issue, a new category of development called Developments of National Significance (“DNS”) was established in the Planning (Wales) Act 2015 (“the Act”). The Act established a framework for a system which may determine prescribed types of development as well as development identified as of national significance in a National Development Framework (“NDF”). The detailed procedure of the system is contained in statutory instruments.
- 4.3 The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 specify the criteria for development to be of national significance for the purposes of Section 62D of the 1990 Act. Regulation 3 specifies the types of development which could be of national significance. The types of development where applications for planning permission are to be determined under this process are those which are of greatest significance to Wales in terms of their potential impacts. Regulation 4 specifies that energy generating projects with an expected installed generating capacity of between 10MW and 50MW are captured as DNS.
- 4.4 Following the making of the Orders by the UK Government which give the consenting of all onshore wind consenting to LPAs in England and Wales, there could be an unusual situation where the consenting for wind energy projects below 10MW and above 50MW are consented at the local planning authority at the local level. Only energy projects of between 10MW and 50MW would be consented by the Welsh Ministers.
- 4.5 The aforementioned evidence which underlies the energy thresholds for DNS cites that the performance of local planning authorities in achieving timely decisions on energy projects between 10MW and 50MW is not satisfactory.

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<sup>1</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 47](#)

<sup>2</sup> [Evaluation of consenting performance of renewable energy schemes in Wales \(January 2013\) Page: iv-vi](#)

<sup>3</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 81, para 7.3.25](#)

This evidence would equally apply to those wind energy projects subject to the Orders, which are above 50MW.

- 4.6 The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Amendment) (Wales) Regulations 2016 make changes to the threshold for energy generating stations to capture those onshore wind generating stations which have an installed generating capacity of above 50MW. Table 1 (below) reflects the effect of the provisions in *italic* text:

**Table 1: Amended threshold for onshore energy generating stations**

Type of Development	Threshold
<p>Onshore energy generating stations, with the exception of nuclear.</p>	<p><b>The construction of energy generating stations, with the exception of onshore energy generating stations that generate electricity from wind:</b></p> <p>The generating station is expected to have (when constructed) an installed generating capacity of between 10MW and 50MW.</p> <p><b><i>The construction of energy generating stations that generate electricity from wind:</i></b></p> <p><i>The generating station is expected to have (when constructed) an installed generating capacity of 10MW and above.</i></p> <p><b>The alteration or extension of existing energy generating stations, with the exception of onshore energy generating stations that generate electricity from wind:</b></p> <p>The effect of the alteration or extension is to increase the installed generating capacity by at least 10MW, but not so that the installed generating capacity exceeds 50MW.</p> <p><b><i>The alteration or extension of onshore energy generating stations that generate electricity from wind:</i></b></p> <p><i>The effect of the alteration or extension is to increase the installed generating capacity by at least 10MW.</i></p>

## 5 Consultation

- 5.1 Comments received in response to the “Positive Planning: proposals to reform the planning system in Wales” consultation, which ran from 4 December 2013 to 26 February 2014, established overall agreement on the establishment of a new category of nationally significant development. These principles were approved by the National Assembly for Wales, in passing into Law the Planning (Wales) Act 2015.
- 5.2 The “Developments of National Significance” consultation paper was launched on 20 May 2015 and was open for responses until 12 August 2015. The paper set out detailed proposals for a system to administer and determine this category of planning application. It contained the detail that was intended to be prescribed in supporting regulations and orders, including the thresholds and criteria which would determine which projects are ascribed DNS status. Question 1 of that consultation document specifically asked respondents whether they agreed with the proposed thresholds and categories of development
- 5.3 There was an overall agreement with the types and thresholds of development captured by DNS. Local planning authorities were most positive overall with only one negative response. The views of the Business/Planning Consultant and voluntary sectors was mixed with more negative responses to the question than positive (“Yes” or “Yes (subject to comments)”)
- 5.4 The key themes in response to question 1 were as follows:
- There was an overall agreement with the types and thresholds of development that DNS captures;
  - There was particular debate around the thresholds for energy generating projects, with some respondents taking the view that DNS should capture energy projects down to a level of 10MW. Many others considered that the threshold should be expanded in the light of announcements by the UK Government for the further devolution of energy projects up to 350MW and the transfer of decision-making of on-shore wind energy projects to local planning authorities in England and Wales; and
  - There were a number of suggestions for additional development to be captured by DNS, including calls for open cast coal mining, development involving the onshore exploration or production of unconventional oil and gas, and new road projects.
- 5.5 A full summary of responses was published online at <http://gov.wales/consultations/planning/developments-of-national-significance/?lang=en>

## 6 Regulatory Impact Assessment

- 6.1 Figures and assumptions contained within this Regulatory Impact Assessment (“RIA”) have been derived following extensive evidence gathering both during the passage of the Planning (Wales) Bill and following its enactment. Further evidence has since been gathered as the process for determining an application for DNS has been defined and refined through the production of statutory instruments. Evidence has included that provided in response to the “Developments of National Significance” consultation which ran between 20 May 2015 and 12 August 2015 (see section 5) and from stakeholders engaged by the Welsh Government, including local planning authorities, the Planning Inspectorate and the development industry. The figures will therefore differ from those contained within the RIA accompanying the Planning (Wales) Act 2015.

### Options

- 6.2 This RIA assumes that the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 have been approved by the National Assembly for Wales, and will come into force on 1 March 2016.
- 6.3 Two options have been considered:
- Option 1- Do nothing, the projects which are ascribed DNS status are those contained in the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 and those which are specified as of national significance in the NDF. Those prescribed projects include
    - Energy Generating stations (Between 10MW and 50MW);
    - Underground gas storage facilities;
    - LNG;
    - Gas reception facilities;
    - Airports;
    - Railways;
    - Rail freight interchanges;
    - Dams and reservoirs;
    - Transfer of water resources;
    - Waste water treatment plants; and
    - Hazardous waste facilities.
  - Option 2 – As Option 1, but Include onshore energy generation from wind where generating capacity is greater than 50 MW, in addition to energy generating stations between 10MW and 50MW.

## Option 1 – Do Nothing

### Description

- 6.4 Without making a change to approved legislation, planning applications for prescribed projects which are ascribed as DNS would be submitted directly to the Welsh Ministers and will follow the prescribed process for DNS. The Planning (Wales) Act 2015 amends the 1990 Act to set out that a DNS application is to be made to the Welsh Ministers. This option implements an IAG recommendation and research undertaken by Hyder in prescribing projects which are DNS<sup>4</sup>.
- 6.5 Changes to the consenting regime for onshore wind generating stations introduced by the Infrastructure Planning (Onshore Wind Generating Stations) Order 2016 and the Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016 will mean that onshore wind generating stations of greater than 50MW generating capacity will no longer require consent under the Electricity Act 1989 Order and will no longer be considered as a Nationally Significant Infrastructure Project (“NSIP”) for the purposes of the Planning Act 2008. Once this legislation is in force, onshore wind energy generating stations within an installed generating capacity of greater than 50MW will be determined by local planning authorities under the Town and Country Planning Act 1990<sup>5</sup>. Three such applications have been made in Wales since the 2008 Act came into force in November 2008 (this equates to an average of 0.43 applications per year).

### Cost

- 6.6 This option maintains the status quo as at 1 March 2016 and does not create additional costs. As noted above, it is estimated that an average of 0.43 applications for infrastructure developments per year in Wales will be affected by the proposals set out in this amendment to Regulations. The assessment of costs and benefits will refer only to these applications. The impacts in 2016/17 are assessed below.

### Welsh Government

- 6.7 Under this option, an average of 0.43 applications for onshore wind energy generating stations with an installed generating capacity of over 50MW per year will be determined by local planning authorities. However, there will be costs to the Welsh Government arising from appeals. Based on existing trends, 0.1 of these applications will be subject to appeal. The cost of the Welsh Government’s participation in an appeal is approximately £14,500. For 0.1 applications, it will cost the Welsh Government an average of £1,450 per year to participate in the appeal process. There will be a negligible number of

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<sup>4</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\), pp 46-49](#)

<sup>5</sup> The Welsh Ministers may decide to call-in these applications.



call ins, based on existing trends. £1,450 is estimated to be the total annual cost (2016/17) to the Welsh Ministers under this option.

### Local Planning Authorities

- 6.8 As the 0.43 applications for onshore wind energy generating stations will be determined by local planning authorities, there will still be some costs and income. It is estimated that the average cost for determining an application for a proposed infrastructure development is £44,750<sup>6</sup>. Assuming an average of 0.43 applications per annum given an average cost to Local Planning Authorities of approximately £19,250 per year. This cost is assumed to be directly offset by the planning fee received from the developer.
- 6.9 The cost to a Local Planning Authority of participating in an appeal is approximately £1,740. On the basis of there being an average of 0.1 appeals per year, it will cost an average of £175 per year to participate in the appeal process. There will be a negligible amount of call ins, based on existing trends. £175 will be the total cost to the local planning authority under this option.

### Development Industry

- 6.10 Developers bear the cost of preparing their proposed scheme and using the planning system to obtain planning permission. Planning applications will normally require the payment of a fee.
- 6.11 Developer costs vary according to the size of a development. It is estimated that the cost of preparing an application for an infrastructure development is £128,700, on average. Under this option, developers seeking planning permission for an infrastructure development will submit their applications to the local planning authority. For 0.43 applications assumed to be submitted each year, the cost is £55,350.
- 6.12 The application fee paid to the local planning authority is estimated to be £44,750 per application (i.e. equal to the cost incurred by the Local Planning Authority in determining the application). For 0.43 applications per year, this is £19,245.
- 6.13 There shall also be a cost to the developer in participating in any subsequent appeal. For 0.1 appeals per year, the cost to developers is £480 (based on an estimated cost of £4,800 per appeal). Based on existing trends, there will be a negligible amount of call-ins.
- 6.14 With an estimated 0.43 applications per year being made to the local planning authority, the average annual cost of option 1 for developers is estimated to be £75,075.

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<sup>6</sup> From data for [Quantification of Infrastructure and Business/Commercial Planning Applications Submitted in Wales – Final Report \(2014\)](#). It should be noted that the actual fees paid varied significantly.

## The Community

- 6.15 The community and interested parties are able to review and comment on proposed schemes submitted to the local planning authority, and to the Welsh Ministers on appeal. There is a time cost to interested parties and the general public in participating in the planning process, but the ability of interested parties / the general public to participate is unchanged in both application methods.

## **Benefits**

- 6.16 There are no additional benefits under this option. However, local planning authorities would retain control over the most significant projects within their area.

## **Option 2 – Include onshore energy generation from wind where the installed generating capacity is greater than 50 MW within the definition of DNS.**

### **Description**

- 6.17 The Infrastructure Planning (Onshore Wind Generating Stations) Order 2016 will amend section 14 of the Planning Act 2008 (“the 2008 Act”). The amendment will mean that construction or extension of an onshore wind generating station is no longer a nationally significant infrastructure project for the purposes of the 2008 Act. The Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016 amends Section 36 of the Electricity Act 1989. Section 36 of the Electricity Act provides that generating stations with a generating capacity of greater than 50MW may not be constructed, extended, or operated without consent granted by the Secretary of State under section 36(1). The Order makes a direction to provide that the requirement for consent does not apply to onshore wind generating stations. The result is that applications for the construction or alteration of an onshore wind generating station of greater than 50 MW may be determined under the Town and Country Planning Act 1990 (“the 1990 Act) by a local planning authority.
- 6.18 To ensure that the most significant infrastructure development not captured by the NSIP regime under the Planning Act 2008 is dealt with at the appropriate level, this option requires that all development for onshore wind generating stations with an installed generating capacity of over 50MW will be decided by the Welsh Ministers under the DNS process.
- 6.19 Under this option, certain secondary consents may also be submitted alongside development identified as being of national significance. The ability to submit applications for secondary consents is optional and at the discretion of the developer. There is no obligation for developers to submit applications for secondary consents directly to the Welsh Ministers.

## Cost

6.20 This option removes the upper threshold for onshore wind generation stations, resulting in more applications (those for 50 MW generating capacity or above) being considered as DNS. This option will use a route whereby the Welsh Ministers' appointed person (the Planning Inspectorate) will process the application(s) and present a report to the Welsh Ministers. The Welsh Ministers will make a decision on the application and any application(s) for secondary consent following consideration of the report. The impacts on the year 2016/17 are assessed below.

### Welsh Government

6.21 Under this option, the Welsh Ministers' appointed person will process the 0.43 infrastructure applications and present a report to the Welsh Ministers on each. The Welsh Ministers will make a decision on the DNS application following consideration of the report. The Planning Inspectorate will be appointed to carry out this work. Therefore, for the purposes of this assessment, the cost of processing and providing a report for the Welsh Ministers will be based on the work being carried out by the Planning Inspectorate.

6.22 The cost to the Planning Inspectorate will vary depending on the procedure<sup>7</sup>. Each DNS application will include tasks which will be performed by either administrative staff<sup>8</sup> or Inspectors. Additionally, administrative staff perform a support function for Inspectors in performing their duties. This support will be less for the written representations procedure and slightly higher for hearings and Inquiries, resulting in differing daily rates.

6.23 Each DNS application will consist of sections of work that are the same regardless of procedure and therefore represent a fixed average cost. The total cost to the Planning Inspectorate of dealing with a DNS application will be the costs associated with this standard work plus the relevant daily rate (multiplied by the number of days required to undertake this variable work). It is anticipated that an application proceeding via the inquiry procedure will require more work to process than one proceeding by the written representations or hearing procedures. It is assumed that applications proceeding by written representations or a hearing will require a minimum of 8 days' work, and those proceeding by Inquiry will require a minimum of 12 days' work.

6.24 Any application for secondary consent submitted by the developer to the Welsh Ministers will be processed and determined alongside the main application for DNS, using the same procedure. The ability to submit applications for secondary consents is optional for the developer. Inclusion of secondary consents alongside the main application for DNS may increase the

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<sup>7</sup> This will be written representations, Hearing, or Inquiry, or a combination. Where it is possible, examination will proceed by way of written representations although specific issues, because of their complexity, may require examination through a hearing or more formal inquiry procedure.

<sup>8</sup> This term encapsulates all non-Inspector staff, including Planning Officers

number of days' work associated with determining the DNS application, though fixed costs will remain the same. As it is optional for a developer to submit applications for secondary consent alongside an application for DNS, and the number of secondary consents relevant to an application for DNS will vary, there are no existing trends and it is not possible to accurately predict any additional costs. Table 2 therefore indicates the estimated minimum costs of determining an application for DNS along with any secondary consents.

<b>Table 2 - Estimated minimum costs (excluding pre-application services) for each procedure</b>			
Procedure	Written Representations	Hearing	Inquiry
Notification	£580	£580	£580
Validation, Representations and Publicity, Determination of procedure	£15,350	£15,350	£15,350
Daily Costs <sup>9</sup>	£6,960	£7,360	£11,040
Advertising (Actual)	£0	£400	£400
Venue Hire (Actual)	£0	£1,400	£2,100
Welsh Ministers	£14,700	£14,700	£14,700
<b>TOTAL</b>	<b>£37,590</b>	<b>£39,210</b>	<b>£43,590</b>

6.25 Along with the standard and variable costs related to work undertaken by the Planning Inspectorate, and the fixed costs of the Welsh Ministers, there may be actual (external) costs. Actual costs may be for advertising or venue hire, or for legal services, appointment of an assessor or commissioning of reports from external sources<sup>10</sup>. Other than the estimated costs for advertising and venue hire (included in Table 2, above), it is not possible to quantify these for DNS applications. Fees will be levied on developers on the basis of full cost recovery to include these actual costs.

6.26 On the basis of the costs in Table 2 and assuming 0.43 DNS applications per year on average, the estimated cost to the Welsh Government will, on

<sup>9</sup> Estimated days: Written Representations/Hearing = 8; Inquiry = 12. Daily Rate: Written Representations = £870; Hearing/Inquiry = £920

<sup>10</sup> Where applications for Secondary Consent are submitted alongside the main application the need for reports and input from subject matter experts (for example in relation to Hazardous Substance or Ancient Monuments) may increase.

average, vary from £16,165<sup>11</sup> to £18,745<sup>12</sup> per year, dependent on procedure and excluding any actual costs (beyond venue hire or advertising).

- 6.27 There will be additional costs to the Planning Inspectorate in providing pre-application services. Pre-application services may be given at any stage prior to submission of an application for DNS and may be provided on more than one occasion (in a form set out in secondary legislation). The nature and extent of the advice requested may differ considerably from application to application and is likely to involve desk-based assessments and site visits (where appropriate). It is not possible to estimate the costs of this part of the process. The cost to the Planning Inspectorate of providing pre-application services will be assessed at an hourly rate of £55 per hour (excluding VAT) with charges levied on developers for provision of these services on the basis of full cost recovery.
- 6.28 Developers will pay an application fee for their DNS application. The fee that will be paid has been defined, following consultation, within the Developments of National Significance (Fees) (Wales) Regulations 2016. The total fee to be paid to the Welsh Ministers (or their appointed representative, the Planning Inspectorate) will be made up of fixed fees, a daily rate dependent on procedure, and any actual costs, with the goal of full cost recovery. The estimated minimum fee payable by a developer (excluding actual costs beyond those estimated for advertising and venue hire and fees for pre-application services) for each procedure is therefore set out in Table 2.
- 6.29 Set up costs associated with the DNS process, including recruitment, are estimated to be £14,100. This cost was assessed as part of the RIA which supplemented the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 and is not included as part of this assessment. There are no additional set-up costs associated with this option.

### Local Planning Authorities

- 6.30 For LPAs, this option will generate work resulting from engaging with the DNS application process. This will primarily be the production of a Local Impact Report (“LIR”). Tasks such as updating the Planning Register, putting up site notices and attending hearings or inquiries which are currently undertaken for applications and appeals will also attract further costs for the LPA. It is estimated that for the production of an LIR, and for putting up the site notices, the cost to LPAs will be £7,750<sup>13</sup> per application. DNS applications to vary or remove conditions associated with a previously granted consent will have lower costs<sup>14</sup> as it will only be necessary for the LPA to update a previously produced LIR.

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<sup>11</sup> All applications proceeding by the Written Representations procedure

<sup>12</sup> All applications proceeding by the Inquiry procedure

<sup>13</sup> For s73 DNS applications, this will be £2,350

<sup>14</sup> Costs for the production of LIR and erection of site notices for s73 DNS application estimated to be £2,350

- 6.31 Developers will be required to pay a fee to LPAs for the DNS application work they are required to carry out. For illustrative purposes it is assumed that this fee will be equivalent to the estimated cost of carrying out the work in producing the LIR and erecting site notices, which is £7,750 per application. Therefore, LPAs will receive an estimated income of £3,335 on average per year for the DNS application work, based on 0.43 applications per year. This means that, in effect, the new DNS application function that LPAs will have will be cost neutral.
- 6.32 As indicated previously, there may be additional costs associated with participation in the DNS application process, though these are not unique to DNS. These may include attendance at a hearing or inquiry (should the LPA choose to do so), updating the planning register, or submitting comments<sup>15</sup> on the merits of a DNS application. It is not possible to quantify these.
- 6.33 There will be a further cost associated with the provision of pre-application advice to the applicant. This advice will take a form set out in legislation<sup>16</sup>. There will be a fee associated with provision by LPAs of pre-application advice payable direct to LPAs. The fee is intended to cover the costs of the LPA in providing this advice.

#### Development Industry

- 6.34 For DNS development, the developer will be required to pay a fee to the Welsh Ministers, part of which will be paid on to the local planning authority to cover the costs of producing the LIR (provided the LIR is adequate and is received on time). Fees to the Welsh Ministers will vary between £37,590 and £43,590, as specified in Table 2. There shall also be the additional cost for of the production of the LIR of £7,750, unless an application to vary or removed conditions on a previously granted consent under s.73 Town and Country Planning Act 1990 (where a fee of £2,350 will apply). The total fee is therefore expected to range between £39,940 and £51,340. For the expected 0.43 applications per year, the application fees will therefore be between approximately £17,175 and £22,075 per year.
- 6.35 There may be additional costs for pre-application advice requested from the Planning Inspectorate, the LPA or both. Pre-application advice provided by the LPA for a DNS application will take a form set out in legislation and will be subject to a fixed fee<sup>17</sup>. Pre-application services provided by the Planning Inspectorate on behalf of the Welsh Government will, given its more varied nature, be subject to an hourly rate fee. There is no requirement for the applicant to request pre-application advice from either the LPA or the Welsh Ministers, though they may request advice from either or both, and may make requests on more than one occasion to the Welsh Ministers. Given the variable nature of the advice that will be provided on behalf of the Welsh

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<sup>15</sup> The LIR is not intended to be used in a way which expresses political views, recommendations, or a balancing exercise on the acceptability of an application for DNS. It is open to the Council to express their views separately.

<sup>16</sup> The Developments of National Significance (Wales) Regulations 2016

<sup>17</sup> £1,500

Ministers by the Planning Inspectorate, it is not possible to quantify the likely cost to developers.

- 6.36 It is assumed that most application sites will be located within one LPA, though it is possible, particularly for linear schemes, that development may be located within more than one LPA area. In such circumstances, an LIR fee will be payable to each LPA. Developers will also be required to pay a fee to the relevant local planning authority to cover the costs of their involvement in the DNS application process (specifically the production of the LIR and the cost of putting up site notices). This will be £7,750 in most cases (and £2,350 in the case of applications to vary or remove conditions associated with a previous consent).
- 6.37 This cost of preparing an application is estimated to be the same as an application submitted to the local planning authority, under Option 1 (£128,700). For 0.43 applications per year, this is estimated as £55,340. Along with the fees identified above, the average annual cost of this option for developers is estimated to be between £72,515 and £77,415.

### The Community

- 6.38 The role of the public and interested parties in the new development management system defined will be different from their role in the current system, as described in option 1.
- 6.39 Communities may participate in the same way as they would where an application is submitted to the local planning authority; however, there is provision which enables community councils to submit a voluntary Local Impact Report for infrastructure. Where they consider it necessary to do so, community councils will require time to compile and submit such a report. However, members and volunteers of such councils are generally non-salaried. Thus, this impact is not financially quantifiable.

### **Benefits**

#### Welsh Government

- 6.40 The main benefits for the Welsh Government result from the achievement of policy objectives and the retention of accountability for infrastructure development in Wales. By prescribing onshore wind generating stations with an installed generating capacity of over 50MW, the Welsh Ministers will be able to speed up the planning process for infrastructure projects (largely expected to be renewable energy schemes). This will contribute to Ministerial aims of encouraging economic growth and to achieving low carbon and sustainable energy aspirations. This option ensures that the largest of these schemes are determined at an appropriate level, in a timely manner supporting these aims.

- 6.41 This option removes an anomaly whereby the smallest and largest applications would be determined by local planning authorities, with medium-large scale energy projects being determined by the Welsh Ministers.

#### Local Planning Authorities

- 6.42 This option provides local planning authorities with the ability to focus their resources on more frequent and regular casework by removing the irregular but complex infrastructure casework. Infrastructure applications require specialist knowledge which local planning authorities may not be able to develop and retain due to the low volume of these applications. Creating a different application route for the majority of infrastructure schemes will enable local planning authorities to dedicate more resources to more regular applications for planning permission. These benefits consist of cost savings arising from fewer applications and appeals, and fees received for work related to DNS applications.
- 6.43 Local planning authorities will also retain a role within the DNS application process. This will enable them to ensure their views on the merits of the application are taken into account by the decision-makers. The local planning authority will receive a fee for this work. They will be able to dedicate appropriate resources to their role in the DNS application process without reducing resources for other application casework.

#### Development Industry

- 6.44 Developers can expect to receive a quicker decision on applications for infrastructure development prescribed as DNS, including the largest onshore wind generating stations, increasing certainty in the application process.

#### The Community

- 6.45 The role of the public and interested parties will be different from their role in the current system, as described in option 1. There will be the additional ability for community councils to submit an LIR should they choose to do so. This formally documents the perceived impacts of the DNS on the local area. This will benefit the community through the availability of another avenue within which to offer an assessment on DNS proposals.

#### Summary and Preferred Option

- 6.46 Option 1 offers benefits for local planning authorities by way of control over the most nationally significant projects within the competence of the Welsh Ministers. Crucially, it will not address issues regarding their consenting performance for large scale infrastructure projects. Option 1 would leave an unusual situation whereby local planning authorities determine the largest and most nationally significant energy projects, whereas smaller generating projects are determined at the national level. Research has suggested that energy generating schemes have not proven to be determined in a timely manner by local planning authorities. It is such projects that offer a key



contribution to Wales' energy mix. The disadvantages of having such projects determined by local planning authorities, namely timeliness and the lack of experience in dealing with such infrastructure projects, outweigh any costs.

- 6.47 The Welsh Ministers propose that these barriers can be overcome by capturing those largest wind energy generation projects as part of the DNS process. While limited in number, these applications are likely to be technically complex and may be controversial locally. Whilst DNS will be identified in a future NDF, capturing speculative infrastructure development projects that may come forward in advance of the NDF being prepared and published within new legislation will ensure that development that is of most significance to Wales will be determined in a timely manner, reducing delays which affect infrastructure investment.
- 6.48 The preferred option, Option 2, proposes to capture those wind energy generation projects with an installed capacity of over 50MW. The main benefits of the preferred option are that:
- Decisions on the most nationally significant infrastructure schemes will be made more quickly than at present in a more certain timeframe, and on more schemes. This will contribute to Ministerial aims of encouraging economic growth and to achieving low carbon and sustainable energy aspirations;
  - There will be a lower average cost to participating in the system for the developer and less administrative cost to the Welsh Ministers through the provision of proportionate application fees;
  - Democratic accountability will be retained in decisions being made by the Welsh Ministers;
  - Local planning authorities will be able to focus more of their resources on more frequent and regular casework by not having to deal with the irregular but complex infrastructure casework, while retaining some revenue for the work undertaken and the ability to give their views on the proposed development; and
  - All nationally significant development (within the competence of the Welsh Ministers) will be determined at the national level.
- 6.49 Table 3 presents a comparison of the on-going costs incurred by Welsh Government, local planning authorities and developers under both of the options. These costs are expected to be incurred from 2016-17. The running costs of Option 2 are considered proportionate as the resources required to carry out the work will relate entirely to those needed to process and determine the applications.
- 6.50 Option 2 is the preferred option.

<b>Table 3 - Costs and savings per year</b>			
	Cost of Option 1	Cost of Option 2	<b>OPTION 2 SAVING ON OPTION 1</b>
Welsh Government	£1,450 <sup>18</sup>	£0 <sup>19</sup>	<b>£1,450</b>
Local Planning Authority	£175 <sup>20</sup>	£0 <sup>21</sup>	<b>£175</b>
Development Industry	£75,075	Between £72,515 and £77,415	<b>Between £2,560 and -£2,340</b>

<sup>18</sup> The model for DNS is for full cost recovery for work undertaken by the Welsh Government in deciding applications. The process is therefore expected to be cost-neutral and this is reflected in the figures for options 1 and 2. The cost identified under Option 1 relates to participation in the appeals process.

<sup>19</sup> As above

<sup>20</sup> The LPA will receive a fee for production of a Local Impact Report and costs associated with erecting site notices. There may be other costs associated with participation in a DNS application, though these are not unique to DNS. These may include attendance at a hearing or inquiry (should the LPA choose to do so), updating the planning register, or submitting comments on the merits of a DNS application. It is not possible to quantify these. The cost identified under Option 1 relates to participation in the appeals process.

<sup>21</sup> As above

## Appendix 1 Competition Filter

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector categorised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No