



Welsh Government

Consultation – summary of response

Changes to the consenting of infrastructure:

Towards establishing a bespoke infrastructure
consenting process in Wales

November 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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1. Introduction

- 1.1 The “Changes to the consenting of infrastructure: Towards establishing a bespoke infrastructure consenting process in Wales” consultation document was launched on 30 April 2018 and was open for responses until 23 July 2018. A total of 22 specific questions were set out in the consultation document, with a standard form provided for ease of response. Comments were also made outside of the standard questions.
- 1.2 This document details a summary of responses to the consultation, the Welsh Government’s response and the next steps. It is separated into two further sections.
- 1.3 Section 2 provides an overall statistical summary of the consultation and provides details of how the consultation was conducted.
- 1.4 Section 3 provides a summary of all responses received. This includes:
 - A summary of the key findings under each consultation question;
 - A statistical analysis of the views expressed on each consultation question, where statistics could be extracted;
 - A summary and analysis of the key themes generated for each question;
 - The Welsh Government’s response to that analysis; and
 - An explanation of what the Welsh Government will do following the response to each question.
- 1.5 In analysing and summarising the response to this consultation, this report does not address the following:
 - **Clarifications sought to matters of detail:** It is the intention that, when in force, a unified consenting process in Wales will be supplemented by guidance. That guidance will seek to clarify matters of detail raised in this consultation paper;
 - **Comments on individual cases or decisions before or made by the Welsh Ministers:** Given the statutory role of the Welsh Ministers in the planning process it is not possible for them, or anyone else within the Welsh Government, to comment on a decision to which they are party. To do so could prejudice the position of the Welsh Government.

- **Matters outside the scope of the consultation:** Where comments have been made which are relevant to this consultation but were made in relation to matters outside of the scope of the question, efforts have been made to summarise under the correct question. However, comments outside of the remit of this consultation will not be addressed.
- **Comments which incorrectly interpret the proposed policy and existing legislation:** Responses have been received which request changes to policy which, in fact, either reflect the intentions set out in the consultation paper or reflect existing legislation which is to be unchanged.

2. Responses

- 2.1 On 30 April 2018 over 300 stakeholders, including individuals and organisations were notified by email of the publication of the consultation. These were drawn from the core consultation list held by the Planning Directorate of the Welsh Government, as well as a number of other bodies who expressed an interest. This included all local planning authorities (“LPAs”) in Wales, public bodies, special interest groups and other groups. The consultation was made available on the Welsh Government’s consultation website.
- 2.2 The consultation generated 46 responses and we are grateful to all those who responded. All the consultation responses have been read and considered as part of this analysis.
- 2.3 A consultation form was provided as an annex to the consultation document and separately on the Welsh Government’s consultation website. Respondents were asked to assign themselves to one of six broad respondent categories. Table 1 below shows the breakdown of respondents.

Table 1 - Breakdown of Respondents		
Category	Number	% of total
Businesses / Planning Consultants	10	22%
Local Authorities (including National Park Authorities)	10	22%
Government Agency/Other Public Sector	12	26%
Professional Bodies/Interest Groups	9	20%
Voluntary Sector	2	4%
Others (other groups not listed)	3	6%
Total	46	

- 2.4 Consultation questions 1 – 21 and 23-24 posed policy specific questions. The questions required one of the following responses; ‘yes’, ‘yes (subject to further comment)’ or ‘no’. A statistical overview of the responses, showing the nature of the responses to questions is presented as part of the analysis to each question in section 3 of this document. Where respondents did not specify a particular answer, these were considered and recorded as ‘don’t know’. Where respondents provided comments and were clear in their views, but did not specify a particular answer, these responses were either assigned ‘Yes (subject to further comment)’ or ‘no’.

Table 2: Consultation Questions

Q1	Do you agree with our interim arrangements for onshore electricity generating stations? If not, why not?
Q2	Do you agree with our short-term proposals regarding the storage of electricity? If not, why not?
Q3	Do you agree with our interim arrangements for overhead electric lines? If not, why not?
Q4	Do you agree with interim arrangements for offshore electricity generating stations? If not, why not?
Q5	Do you agree with our proposals to seek the transfer of power of necessary wayleaves and compulsory acquisition connected to a generating station?
Q6	Do you agree with the principles (set out in <i>Paragraphs 3.26 to 3.43</i>) which will underpin a unified consenting process? If not, why not?
Q7	Do you agree with our proposals to remove the consenting of infrastructure from the Developments of National Significance set out under the Town and Country Planning Act 1990 process to an entirely new consenting regime?
Q8	Do you agree with the principle of optional thresholds for Welsh Infrastructure Projects?
Q9	Do you agree it is for the Welsh Ministers to ultimately decide on a case-by-case basis whether an optional Welsh Infrastructure Project qualifies as such? If not, why not?
Q10	Do you agree designation in the National Development Framework for Wales should be a criteria as to whether a development qualifies as a Welsh Infrastructure Project? If not, why not?
Q11	Do you agree with the proposed compulsory and optional thresholds for Welsh Infrastructure Projects? If not, why not?
Q12	Do you agree with our proposals to remove the need for consent under the Electricity Act 1989 for all development in the Welsh inshore area? If not, why not?
Q13	Do you agree with our proposals for a Welsh Infrastructure Consent to be either in the form of a standardised consent or a statutory instrument, dependent on the type of application made? If not, why not? proposals?
Q14	Do you agree with the notion of fast-tracking certain classes of development? If yes, please specify where this may be suitable?
Q15	Do you agree with our proposals to disapply the need for certain authorisations attached to the main development? If yes, please specify which authorisations may be included in a Welsh Infrastructure Consent?
Q16	Do you agree the National Development Framework, Welsh National Marine Plan and topic-based policy statements should for the policy basis for determining whether Welsh Infrastructure Projects should proceed or not? If not, why not?
Q17	Do you agree with our proposals for pre-application consultation to form the basis of the Welsh Infrastructure Consent process? If not, why not?
Q18	Do you agree with our proposals to remove inquiries from the process for determining Welsh Infrastructure Consents and for hearings only to be held in place? If not, why not?
Q19	Do you agree with our proposals regarding variations during the determination process and post-consent variations? If not, why not? If you agree, please suggest ways of fast-tracking those variations.
Q20	Do you agree the LPA is the relevant onshore enforcement authority and

	the Welsh Ministers is the relevant offshore enforcement authority? If not, why not?
Q21	Do you agree with our proposals regarding the compulsory acquisition of land? If not, why not?
Q22	Do you have any other comments to make on both Parts 1 and 2 of this consultation?
Q23	Do you agree with our criteria for delegating non-Ministerial compulsory purchase orders (CPOs) for decision by an Inspector? If not, why not?
Q24	Do you agree with the intention to amend, via primary legislation, section 5(4) of the Acquisition of Land Act 1981 to broaden the power to award costs to parties in relation to compulsory purchase orders (CPOs) being made to facilitate development and other land uses, or for highway purposes?

- 2.5 A list of respondents and the categories they were assigned to can be found in Annex A of this report. Where respondents have asked for their details to be withheld, they will appear as “Anonymous” under the appropriate category, with the exception of private individuals, all of whom will appear as “Anonymous” in order to comply with the General Data Protection Regulations. An ‘Index of Responses’ and copies of the consultation responses received will be published in their original form (redacted for all individuals, even if not requested) on the Welsh Government’s consultation website alongside this report.

3. Summary of Responses

Q1	Do you agree with our interim arrangements for onshore electricity generating stations? If not, why not?
The consultation proposes to raise the threshold for Developments of National Significance onshore generating stations which are not onshore wind to 350MW, as a result of newly devolved powers from the Wales Act 2017. The effect of this will ensure the Welsh Ministers, not Local Planning Authorities, would determine applications submitted between 50MW – 350MW.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	3	0	5	10
B	Local Authorities (including National Park Authorities)	4	2	0	4	10
C	Government Agency/Other Public Sector	1	1	0	10	12
D	Professional Bodies/Interest Groups	0	1	0	8	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		8	7	1	30	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	1
Overall Percentage	93%	7%

Statistical review

- 3.1 The majority of respondents did not answer the consultation question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 93% agreed with the interim arrangement proposals for onshore generating stations, with only one respondent from the 'Others' category disagreeing with the proposals.
- 3.2 Business / Planning Consultants, LPAs, Government Agency / Other Public Sector and Professional Bodies / Interest Groups were all in favour of the proposals with no objections. Those from the Voluntary Sector did not respond to the consultation question.

Key themes

- 3.3 The key themes in response to question 1 were as follows:
- General support for the proposal;
 - Minor concerns about the use of the DNS regime for larger projects which would have been part of the DCO process prior to the commencement of the newly devolved powers; and
 - Ancillary development should be included to avoid split decisions.

Overview

- 3.4 There was general support for the proposal. Respondents acknowledged and accepted the need for an interim arrangement, following the commencement of newly devolved powers from the Wales Act 2017 on 1 April 2019.
- 3.5 Of those respondents in agreement, one Local Planning Authority ("LPA") commented although the expansion of the DNS regime in the short term is supported, Welsh Government guidance on the application process must be adhered to by applicants to ensure applications are submitted to a sufficient standard to endure the examination process.
- 3.6 Another LPA, although in agreement, requested clarity on the role of LPAs under the interim arrangements, specifically in relation to enforcement and their role as a consultee. A query was also raised regarding the expectations of Joint Committees, where one has been set up.
- 3.7 A Business / Consultant suggested applicants should be able to choose the best route for their projects and allow LPAs to become the determining authority for smaller scale projects, whilst referring larger, more contentious projects to the Welsh Ministers.
- 3.8 One Professional Body / Interest Group and one Business / Planning Consultant respondent raised concerns regarding the potential reduction of attractiveness of investment in Wales. It was also commented the interim

arrangements would require significant design detail and a commitment to investment prior to the principle of development being judged acceptable. Three respondents required clarification of transitional arrangements.

- 3.9 A Government Agency commented the interim arrangements should provide certainty by providing a suitable framework for decision-making, including clear timescales for decisions and consultation; and appropriate assessment of environmental impacts.
- 3.10 Two responses (one Professional Body / Interest Group and one Business / Planning Consultant) commented how critical it is for development associated with or ancillary to a DNS project to be included as part of the interim arrangements to avoid split decisions between the Welsh Ministers and LPAs.
- 3.11 A number of responses were received which sought new, clear guidance relating to the interim arrangements, as well as more detailed information on how the Welsh Government intends to implement future arrangements.
- 3.12 One response was received which was not relevant to the question.

Q1 Welsh Government Response

Processes and procedures

Current primary legislation does not allow applicants the choice of route in which their application should be determined (i.e. either by LPAs or the Welsh Ministers). However, we acknowledge LPAs are best suited to determine smaller scale developments and they will retain the ability to determine applications up to 10MW. All other applications up to 350MW will be determined by the Welsh Ministers via the DNS process.

Although developments of between 50MW – 350MW will be determined via the DNS process and not the DCO process, we consider this to be the best interim solution. As discussed in paragraphs 1.21 – 1.27 of the consultation paper, it is our intention to develop a new, unified consenting regime for Wales, which aims to make Wales an attractive place for investment.

Transitional provisions

The relevant transitional provisions relating to onshore generating stations are contained in Paragraph 8 of Schedule 7 to the Wales Act 2017.

Guidance

Existing guidance in relation to the DNS process will be reviewed and if necessary, amended, to reflect the changes brought into force through the commencement of the Wales Act 2017.

Role of LPAs

The role of LPAs will remain the same as they currently are under the DNS regime. Any duties they are expected to carry out as part of the process will continue.

Joint Committees

We are not proposing any new role for Joint Committees and such changes are outside the scope of this consultation.

Ancillary development

No amendments of this nature are proposed to the DNS regime.

Next steps

- 3.13 It is proposed to continue with our proposals to increase the DNS threshold for onshore generating stations from 50MW to 350MW to be determined by the Welsh Ministers rather than LPAs as part of the interim arrangements.

Q2	Do you agree with our short-term proposals regarding the storage of electricity? If not, why not?
The consultation proposes to remove applications for generating stations for the storage of electricity (with the exception of pumped hydro electric storage) from being captured as a Development of National Significance. Such applications will instead be made to Local Planning Authorities.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	4	1	4	10
B	Local Authorities (including National Park Authorities)	5	1	0	4	10
C	Government Agency/Other Public Sector	0	1	0	11	12
D	Professional Bodies/Interest Groups	0	1	0	8	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	1	0	1	3
Total all respondents		7	8	1	30	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	1
Overall Percentage	93%	7%

Statistical review

- 3.14 The majority of respondents did not answer the consultation question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 93% agreed with the interim arrangement proposals for onshore generating stations, with only one respondent from the Business / Planning Consultant category disagreeing with the proposals.
- 3.15 LPAs, Government Agency / Other Public Sector, Professional Bodies / Interest Groups and those from the 'Others' category were all in favour of the proposals with no objections. Those from the Voluntary Sector did not respond to the consultation question.

Key themes

- 3.16 The key themes in response to question 2 were as follows:
- Agreement the environmental impacts of storage technologies are low.
 - Local Planning Authorities are able to decide on such projects.
 - Clarification sought on whether storage can form part of a DNS application where it is associated with a DNS project.

Overview

- 3.17 There was general support for the proposal. Of those who support the proposal, respondents commented rapid deployment of energy storage is vital for the decarbonisation of the Welsh economy. Furthermore, one LPA commented storage is often compact and relatively inconspicuous compared to other forms of generation. One Government Agency / Other public sector respondent agree storage technology has great potential.
- 3.18 One Government Agency / Other public sector and one Business / Planning consultant respondent commented the potential environmental effects from storage schemes can be adequately assessed at the local level. One LPA commented on the lower environmental effect associated with storage applications. One Business / Planning consultant respondent also indicated the proposal would remove barriers to such technology.
- 3.19 Some respondents supported the proposal, however, had concerns over specific aspects.
- 3.20 One LPA commented on the potential for objections to a DNS application for a conventional generating station which connected to an energy storage project to be repeated and duplicated at the local level.
- 3.21 Two Responses were received from Businesses / Planning consultants and one from Government Agency / Other public sector expressing disappointment in the view of storage being classified as a subset of energy

generation. The argument has been made stating the abilities of generation and storage are different. One such respondent also added this classification may be damaging for the viability of a project and commented re-categorisation of storage would lead to increased installation.

- 3.22 While this is the case, one Government Agency / Other public sector respondent understood the need for storage to be defined in this way in the short-term. However, it should be identified as a distinct activity in the long-term.
- 3.23 One response from Business / Planning consultants comments on the prohibition of storage by current grid and network operators due to capacity issues as a reason for the lack of DNS applications for storage.
- 3.24 One respondent from Business / Planning consultants expressed concern that removing storage from DNS may de-unify the consenting regime. Combined with this, one Professional Bodies / Interest Groups and three Business / Planning consultants respondents stated it should be possible to submit storage as an integral part of a conventional onshore generating station to avoid the need for multiple consents.
- 3.25 One Professional Bodies / Interest Groups respondent stated a site area threshold should be introduced to preclude other small-scale generating schemes, such as Short Term Operating Reserves ("STOR"), can be excluded from the DNS process. One Business / Planning consultant respondent also commented STOR facilities should be removed from the DNS regime entirely, due to their relatively small impacts.
- 3.26 One response was received which was not relevant to the question.
- 3.27 A number of respondents representing a range of groups commented storage schemes are often brought forward alongside other generation projects. These respondents sought clarification about how scenarios which contain a hybrid of storage and conventional generation are addressed, as well as clarification on the thresholds for relevant regimes.
- 3.28 One LPA commented guidance and context should be provided to support decision-making at the local level. Additionally, one Government Agency / Other public sector respondent stated it may be useful to review Welsh Government guidance on Planning Implications of Renewable and Low Carbon Energy Development to include storage elements.
- 3.29 One Business / Planning consultant respondent disagreed with the proposal in its entirety and considered there should be a single point of contact for all energy-related infrastructure, in part due to the poor performance of LPAs. One Business / Planning consultant respondent further felt deficiencies in the DNS process should be addressed rather than delegating decisions to the local level.
- 3.30 One LPA commented any requisite legislative change occurring in England should be reciprocated promptly in Wales.

Q2 Welsh Government Response

Storage being classed as generation

As the regulation of energy industries is not a devolved matter, the classification of storage as energy generation is a decision of the UK Government.

Clarification of regimes

The Wales Act 2017 raises the higher devolved threshold for the consenting of generating stations from an installed generating capacity of 50MW to 350MW (with the exception of onshore wind). While this is the case, storage will remain to be classed as a subset of a generation. The proposals contained in the consultation paper will carve out generation which is storage for the purposes of DNS. Thus, a conventional generating station with an installed capacity of between 10MW and 350MW (with the exception of onshore wind) will be consented through the DNS process, while a storage facility with an installed capacity of up to 350MW will be consented by the LPA.

This will not preclude the ability of a developer to apply for a generating station as a DNS, and include the storage aspect as a secondary consent. While this is the case, there may be exceptions. Where storage and more conventional generation combines to reach in excess of 350MW, such projects may be consented by the Secretary of State under the Development Consent Order process where they form a single generating station. This depends on the siting and interrelationship between the storage and conventional generation aspects of the project.

Introduction of site area threshold and the removal of STOR facilities from the DNS process

Consideration has been given to the introduction of a site area. While this could be used as a practical way of determining whether a project is of sufficient significance, by way of its environmental or economic impacts, to merit inclusion or exclusion as a DNS project, there are flaws and exceptions. For instance, a space-based threshold may preclude certain projects with wide impacts, which have a small footprint on land but may have far greater impacts and works underground. Furthermore, a space-based threshold may preclude certain projects from DNS which have unknown impacts. We consider the currently proposed form of determining whether a project is DNS or otherwise is based on sound evidence, which considers the significance of a project as well as LPA performance. While this is the case in the short term, further consideration will be given to space-based thresholds as part of a bespoke and unified consenting process in the long term.

Addressing STOR facilities in particular, while Welsh Government published research indicates the impact of such facilities are relatively small and recommend their removal from the DNS process, no persuasive evidence was submitted which suggests the perceived barriers to such technologies should be removed in the short term. In the move towards a Wales which generates its energy needs from renewable sources, priority has been given to removing barriers for technologies which generate cleanly.

A single point of contact for energy infrastructure

It is our view any proposals which have impacts restricted to the locality should remain to be determined by those elected locally. Our proposals strike the correct balance in allowing those developments which have wider economic and environmental impacts to be determined nationally. Consideration has also been given to the establishment of a single point of contact to determine consenting for all energy infrastructure. It is our view this may cause greater expense to the applicant or developer and may lead to deterring the development of small-scale infrastructure in Wales.

Next steps

- 3.31 It is proposed to progress our proposals to remove applications for generating stations for the storage of electricity (with the exception of pumped hydro electric storage) from being captured as a DNS. Such applications will instead be made to Local Planning Authorities.
- 3.32 We will seek to clarify about how proposals which contain a hybrid of storage and conventional generation are addressed, as well as clarification on how these thresholds may operate in tandem. In terms of policy, a revised version of Planning Policy Wales is being compiled and will be published before the end of the year. The revised format of Planning Policy Wales should equip Local Planning Authorities to determine applications for renewable energy.

Q3	Do you agree with our interim arrangements for overhead electric lines? If not, why not?
<p>The consultation proposes a number of changes in relation to devolved overhead electric lines. This includes transferring exemptions under the Electricity Act 1989 into permitted development rights under the Town and Country Planning Act 1990, bringing the consenting of devolved lines into the DNS process and to assign the default decision-maker as a Planning Inspector.</p>	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	3	1	0	6	10
B	Local Authorities (including National Park Authorities)	4	2	0	4	10
C	Government Agency/Other Public Sector	1	2	0	9	12
D	Professional Bodies/Interest Groups	0	1	0	8	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	1	0	1	3
Total all respondents		9	7	0	30	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	16	0
Overall Percentage	100%	0%

Statistical review

- 3.33 Although the majority of respondents did not answer the consultation question, of those who did (either 'Yes', 'Yes, subject to comment' or 'No'), there were no objections, with 100% of respondents agreeing with the proposal relating to overhead electric lines. However, those from the Voluntary Sector failed to provide a response either in favour or to disagree with the proposal.

Key themes

- 3.34 The key themes in response to question 3 were as follows:
- Support for Inspectors making decisions, however, clarification required on the circumstances in which the Welsh Ministers would make decisions on DNS overhead electric line applications, in place of the Inspector.
 - Widespread support for transferring existing exemptions into the Town and Country Planning Act 1990.
 - Concern over timescales for consenting.

Overview

- 3.35 Overall, there was support for the proposal. Of those who supported the proposal, one Professional Bodies / Interest Groups and one Government Agency respondent commented absorbing overhead electric lines into DNS will provide for some unification of the consenting process. One LPA commented a national approach would alleviate pressure at the local level.
- 3.36 One Government Agency respondent commented the interim arrangements should provide certainty through clear timescales and assist in the longer term transition towards the WIC process. One Professional Body and one Business / Planning Consultant respondent also commented the ability for Inspectors to make decisions on such schemes is pragmatic and would alleviate the timescale mismatch between Electricity Act 1989 and DNS decisions.
- 3.37 One LPA respondent commented grid connection applications should be considered alongside the main generating station consent to prevent duplication of consents.
- 3.38 Some respondents supported the proposal, however, had some concerns over specific aspects. One LPA commented the DNS process may prolong the decision-making process further. A Business respondent also commented a 4 to 6 week period, consistent with the Electricity Act 1989 process is preferred. However, one Professional body and one Business / Planning Consultant respondent also commented the process would be shorter than

the DCO process in many instances, where the overhead electric line is 132KV.

- 3.39 One response was received which was not relevant to the question.
- 3.40 One Business / Planning Consultant respondent questioned statements made in the consultation paper, and asserted LPAs rarely object to applications for overhead electric lines under the Electricity Act 1989 as they are generally less controversial in nature.
- 3.41 One LPA respondent suggested altered thresholds of varying length, power transmissions or LANDMAP classifications could be incorporated to ensure some decision-making at the local level.
- 3.42 While in support, one Professional Bodies / Interest Groups and two Business/ Planning Consultant respondents indicated clear guidance is required on the circumstances for recovered jurisdiction of an application. One LPA also commented detailed consideration should be given to who the appropriate decision-maker is. One Business / Planning Consultant respondent suggested considering extending the ability for Inspectors to make decisions to non-wind generating stations.
- 3.43 One LPA and one Professional Body commented undergrounding of overhead electric lines should be achieved where possible. However, one Business / Planning Consultant respondent suggests this is an unsustainable solution.
- 3.44 One Business / Planning Consultant respondent does not believe proposal will deliver the intended balance between rigour and timeliness of decisions. One Business / Planning Consultant respondent indicated the differences between the UK Government and proposed Welsh process is a cause for concern.

Q3 Welsh Government Response

Timeliness not being achieved

The consultation fully acknowledges the proposals will not result in a timelier process compared with the Electricity Act 1989. Ultimately, the Wales Act 2017 places applications for overhead electric lines into the town and country planning process, which has a wider range of decision-making considerations. It is not possible to change this situation in the short-term. It is our view the benefits gained in terms of a single consenting authority for all overhead electric lines and the potential for applicants to unify applications for consent with those for generating stations outweigh the time disadvantages.

Recovery by the Welsh Ministers

Some responses to the consultation indicated clear guidance is required as to when a particular application would be recovered for determination by the Welsh Ministers. The Welsh Government website sets out the recovery criteria for appeals to the Welsh Ministers. We will review this criteria in the light of the proposal to reserve overhead electric lines for determination by the Welsh Ministers, unless recovered.

Varying thresholds dependent on output and length

Suggestions were made to base the consenting threshold for overhead electric lines on output as well as length to ensure only lines which have a local impact are decided locally. This approach has been considered. The consultation paper is clear regarding the importance of overhead electric lines to the operability of the electricity network. In doing so, there is a requirement for consistency in approach. Those overhead electric lines which are short in length, of a low voltage, and which are likely not to have environmental impacts beyond the locality are highly likely not to require consent under our proposals to transfer exemptions under the Electricity Act 1989 into the Town and Country Planning Act 1990.

Combining grid connection with generating station application

Clarity has been sought as to whether an overhead electric line application can be combined with an application for a generating station under the DNS process. There is nothing to prohibit this from occurring and we would encourage this approach where possible. However, in practice, the applicant for a generating station is usually different to the applicant for the grid connection which often prevents combining both applications.

Undergrounding of lines

It is our continued intention for the majority of development involving the undergrounding of electric lines to be exempt from the requirement of gaining planning consent. While this is the case, applications for overhead electric lines are determined on their merits. Decisions relating to overhead electric lines are expected to be made taking into account the extant development plan, as well as other material considerations, including Planning Policy Wales.

Next steps

- 3.45 It is proposed to progress our proposals regarding overhead electric lines. While this is the case, we aim to review the recovery criteria relating to such applications to clarify the situations when such decisions are recovered by the Welsh Ministers.

Q4	Do you agree with our interim arrangements for offshore electricity generating stations? If not, why not?
The default position set out by the Wales Act is consenting for offshore projects between 1MW and 350MW are to be undertaken through section 36 of the Electricity Act 1989, with decisions being made by the Welsh Ministers. The consultation proposes to make use of this position, however, proposes amendments to fees to align with the DNS process.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	1	0	7	10
B	Local Authorities (including National Park Authorities)	5	1	0	4	10
C	Government Agency/Other Public Sector	2	0	0	10	12
D	Professional Bodies/Interest Groups	0	1	0	8	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		10	3	1	32	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	13	1
Overall Percentage	92%	8%

Statistical review

- 3.46 The majority of respondents did not answer the consultation question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 92% agreed with the interim arrangement proposals for onshore generating stations, with only one respondent from the 'Others' category disagreeing with the proposals.
- 3.47 Business / Planning Consultants, LPAs, Government Agency / Other Public Sector and Professional Bodies / Interest Groups were all in favour of the proposals with no objections. Those from the Voluntary Sector did not respond to the consultation question.

Key themes

- 3.48 The key themes in response to question 4 were as follows:
- Agreement these interim arrangements for offshore consents are logical, but are not sustainable in the long-term.
 - Further clarity required on the relationship between consent to construct and operate a generating station and the Marine Licencing regime.
 - An increase in fees may deter offshore projects from coming forward.

Overview

- 3.49 There was general support for the proposal. Of those who support the proposal, one LPA commented this would not result in a drastic change from the current approach. A number of respondents, while agreeing with the logic of the approach in the short-term, commented the long term vision must be to unify consenting regimes on and offshore.
- 3.50 Some respondents who supported the proposals had concerns over specific aspects. One Professional Body, one Government Agency / Other Public Sector and one Business / Planning Consultant respondent commented the interaction between the consent under the Electricity Act 1989 and the associated marine licence must be reviewed by the Welsh Government, to ensure a good level of service, concurrent decision making and to reduce duplication of workload. One Business / Planning Consultant respondent also commented an effective coordinated service should be provided regardless of the identity of the consenting body.
- 3.51 In relation to offshore schemes, one LPA commented consideration should be given to the Draft Marine Plan in assessing visual impact.
- 3.52 Regarding the proposed changes in fees, one Professional Body and one Business / Planning Consultant respondent commented an increase may be a material factor in preventing smaller schemes from coming forward. The latter

respondent further commented the reference to Scottish proposals in the consultation paper for rises in fees relating to offshore consents is unhelpful.

- 3.53 One response was received which was not relevant to the question.
- 3.54 Clarification was sought by one Government Agency / Other Public Sector respondent on transitional arrangements for offshore consents.

Q4 Welsh Government Response

Transitional arrangements

Arrangements for the transfer of consents are already set out at Schedule 7, Paragraph 8 of the Wales Act 2017. Along with the Wales Act 2017 (Commencement No.4) Regulations 2018, this means the transfer of authority for Electricity Act 1989 consents from the Secretary of State to the Welsh Ministers does not apply to any application made (and which meets the requirements set out in that Act) to the Secretary of State before 1 April 2019.

Interaction with marine licence

It is acknowledged the inherited position, as a consequence of the Wales Act 2017, would be for offshore generating station consents and the associated marine licence to be issued by two different bodies. The Welsh Government are working with Natural Resources Wales to establish appropriate working arrangements to ensure a good level of service for developers during the interim period. It remains the long-term intention of the Welsh Government to unify these consents offshore.

Policy context

When in force, the Welsh National Marine Plan ("WNMP") would be the main decision-making document for offshore consents. However, in its draft form, it is not an adopted plan. Thus, its weight in the decision-making process is limited at this time.

Changes to fees

While there was some opposition to the consultation proposal to the changes of fees for Electricity Act 1989 consents offshore, a change is considered necessary as these fees have remained largely unchanged since 2006. The proposed rises in fees proposed by the Scottish Government are referenced in our consultation for the purposes of illustration, and it is not proposed to follow the same charging method or level of fee increase.

We consider our proposed method is fair, which bases fees on the level of complexity and number of issues a project may have. Ultimately, in accordance with Public Finance principles, it is not intended to profit or make a loss on the determination of generating station applications. While this is likely to result in a rise in fee for smaller schemes, we believe such schemes would not be charged unfairly for the level of service received, and such applicants are likely to pay significantly less than those for larger, more complex schemes.

Next steps

- 3.55 It is proposed to progress our proposals in relation to the consenting of offshore generating stations, as specified in the consultation paper. While this is the case, there will be some changes to the wording of our fee structure, for the purposes of precision and to better align the associated fees with the procedures under the Electricity Act 1989.

Q5	Do you agree with our proposals to seek the transfer of power of necessary wayleaves and compulsory acquisition connected to a generating station?
To provide continuity for applicants for onshore generating stations and to assimilate the necessary wayleaves or compulsory purchase processes with the main consent, the consultation proposes to seek the transfer of power from the UK Government to grant necessary wayleaves or authorise compulsory purchase orders associated with devolved generating stations.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Did not answer	Total
A	Businesses / Planning Consultants	2	2	0	6	10
B	Local Authorities (including National Park Authorities)	5	1	0	4	10
C	Government Agency/Other Public Sector	1	2	0	9	12
D	Professional Bodies/Interest Groups	0	0	0	9	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		9	5	1	31	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	14	1
Overall Percentage	93%	7%

Statistical review

- 3.56 The majority of respondents agreed with the proposal to seek the transfer of power of necessary wayleaves and compulsory acquisition connected to a devolved generating station. Of those, a number of LPA and Government Agency/Other Public Sector respondents agreed subject to comments being made. Nine Professional Body/Interest Group and six Businesses/Planning Consultants respondents were neutral on the proposals. One Other respondent did not agree with the proposal.

Key themes

- 3.57 The key themes in response to question 5 were as follows:
- It makes sense for the necessary wayleaves and compulsory purchase powers to be held by one authority in relation to Wales; and
 - To complement streamlined development processes for renewable generation and storage this is a logical proposal.

Overview

- 3.58 The majority of respondents agreed and supported our proposal to seek the transfer of power of necessary wayleaves and compulsory purchase orders ("CPOs") connected to devolved generating stations. A Businesses/Planning Consultants respondent considered the transferring of these powers to the Welsh Ministers would not pose any significant adverse impact on the process of initiating new projects.
- 3.59 A response from a Professional Body/Interest Group, who agreed with the proposal, stated a failure to provide adequate compulsory acquisition powers would make Wales a less attractive place to invest in large scale infrastructure projects until such time as the long-term solution is implemented.
- 3.60 Two LPA respondents, who agreed with the proposal, stated the transfer of the relevant powers could reduce the current procedure times for these processes and give developers more certainty.
- 3.61 A LPA respondent stated it was their view the Welsh Ministers are best placed to grant or authorise necessary wayleaves and CPOs.
- 3.62 A Professional Body / Interest Group respondent, although content with the proposal, outlined there should be guidance which adequately sets out the balance of interest between the electricity company and the landowners who are affected.
- 3.63 Concern was expressed by a Professional Body / Interest Group and a Businesses/Planning Consultants respondent on whether the measures set out in Part 3 of the consultation document are sufficient to achieve the aspiration to be at *"the forefront of low carbon development"*.

Also, that paragraph 2.3 of the consultation document contradicts earlier comments by stating that the short-term arrangements “*may not provide the full range of powers the developer requires from the Welsh Ministers, such as powers to authorise compulsory acquisition...*”. Further comments were provided by the respondents stating further consideration was needed on this matter to ensure necessary wayleaves and compulsory purchase powers were available to developers.

3.64 One comment was received which was not relevant to the question.

Q5	Welsh Government Response
	<p>The majority of respondents agreed with the proposal to seek the transfer of power of necessary wayleaves and compulsory acquisition connected to a devolved generating station.</p> <p>Comments on the reference to the “<i>safeguard[ing of] Wales’ position at the forefront of low carbon development</i>” relate to making changes to the current process in gaining planning permission for DNS. The measures in Part 3 of the consultation paper relate solely to procedural changes to the existing compulsory purchase regime in Wales. There is no relationship between the existing compulsory purchase procedure, i.e. the making and confirmation of CPOs, and the DNS consenting regime.</p> <p>We agree with respondents comments which state the failure to provide adequate short-term arrangements will make Wales a less attractive place to invest in large scale infrastructure projects. This is an important issue as the powers to grant necessary wayleaves or authorise compulsory acquisition of land or rights are essential to the consenting process for devolved generating stations. We intend to continue to seek the transfer of powers to the Welsh Ministers enabling them to confirm CPOs, authorise necessary wayleaves or the felling or lopping of tress relating to devolved onshore generating stations.</p> <p>We envisage the consenting process for applications for necessary wayleaves or the felling and lopping of tree orders associated with devolved overhead lines and which are not WIPs will be separate from the new WIC regime.</p>

Next steps

3.65 To ensure the interim arrangements provide the full range of powers developers require, we will continue to press the UK Government for the transfer of functions relating to the powers under Schedule 3 and 4 to the Electricity Act 1989 for the Welsh Ministers to authorise CPOs, give consent for necessary wayleaves or the felling or lopping of tress associated with devolved onshore generating stations.

Q6	Do you agree with the principles (set out in paragraphs 3.26 – 3.43) which will underpin a unified consenting process? If not, why not?
The consultation sets out a number of principles which will underpin a new unified consenting process. These principles include basing decisions on clear policy, providing statutory timeframes, streamlining the amount of consents required and strengthening the role of local communities. The consultation asks whether respondents agree with these principles.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	3	1	5	10
B	Local Authorities (including National Park Authorities)	3	3	1	3	10
C	Government Agency/Other Public Sector	2	1	1	8	12
D	Professional Bodies/Interest Groups	0	3	0	6	9
E	Voluntary Sector	1	1	0	0	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		8	11	4	23	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	19	4
Overall Percentage	82%	18%

Statistical review

- 3.66 Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No') to the consultation question, 82% agreed with the principles set out in Paragraphs 3.26 – 3.43 of the consultation paper.
- 3.67 Respondents from the Voluntary Sector and Professional Bodies / Interest Groups all agreed with the proposals with no objections. Those from the Business / Planning Consultant, LPA and Government Agency / Other Public Sector categories provided mixed responses, although the majority of respondents from these categories agreed with the proposal.

Key Themes

- 3.68 The key themes in response to question 6 were as follows:
- General agreement with the proposals which underpin a unified consenting regime;
 - Greater detail is required on how policy and legislation will influence the consenting process; and
 - A lack of detail surrounding certain issues.

Overview

- 3.69 Although the majority of respondents were in agreement with the consultation question, a number of queries and issues were raised in relation to specific principles.
- 3.70 Respondents from the Government Agency / Other Public Sector and Professional Body / Interest Group categories stated the consultation paper made little reference to statutory consultees and must be considered as part of designing the consenting process, particularly on certain issues such as health. Similarly, another Government Agency / Other Public Sector respondent commented further emphasis should be placed on effective engagement with specialist consultees.
- 3.71 A comment was also received by a Government Agency / Other Public Sector respondent in relation to substantive responses from statutory consultees, suggesting what constitutes a 'substantive response' should be defined for clarity.
- 3.72 Several comments were also received from a range of stakeholders in response to taking account for legislation and policy. These included:
- Lack of reference to 'Prosperity for All' and the Well-being of Future Generations Act 2015;

- Requiring an explanation of how the consenting principles are underpinned by The Environment (Wales) Act 2016 and the Welsh Government Natural Resources Policy;
 - How policy frameworks will interact with each other and with relevant UK policy (i.e. National Policy Statements); and
 - The need to review relevant areas of law.
- 3.73 Similarly, a number of respondents raised concerns regarding secondary consents. They commented this approach requires careful consideration.
- 3.74 Furthermore, both a Business / Planning Consultant and a Professional Body / Interest Group respondent suggested the Welsh Government work closely with relevant stakeholders to deliver secondary consents and, for consistency, the type of consents included as part of a WIC should match those of NSIPs.
- 3.75 A variety of specific, wide-ranging comments were received from respondents who agreed with the proposal, including:
- Cross border issues between Wales and England in relation to impact, consultation and determining authorities;
 - A lack of detail as to how strengthening the role of local communities will be achieved;
 - Suggesting pre-application discussions with relevant LPAs should be mandatory;
 - Further details surrounding fast tracking applications;
 - Allowing the 'one stop shop' to be discretionary, particularly for Contracts for Difference auctions; and
 - General lack of detail surrounding the WIC process.
- 3.76 Of those who disagreed with the proposals, a Business / Planning Consultant considered the consultation did not go far enough by suggesting 'any scheme can be shaped with their comments in mind' during the pre-application stage when compared to the Planning Act 2008 which requires developers to show the account taken of relevant responses.
- 3.77 Another Business / Planning Consultant raised concerns over resource implications in delivering a new consenting regime, a lack of accountability and suggested more definition and standardisation around the proposed consenting process is required.
- 3.78 An LPA broadly agreed with the principles, but felt they could not fully agree as they considered there to be significant scope to refine a number of the proposals, including:
- The role of Joint Committees in the process;
 - Ensuring the role of LPAs is not undervalued, yet acknowledging the potential strain on resources;
 - Outlining what community consultation should achieve (i.e. if it is about shaping development, engagement should not be limited to written representations, but also include workshops and sessions);

- Allowing LPAs to submit a technical LIR where their opinion differs from elected members; and
 - How enforcement will operate.
- 3.79 One Private Individual disagreed entirely with the principles, and commented expediency will override local opinion, interests and expertise.
- 3.80 A number of respondents asked for a clear timeframe for implementation.

Q6 Welsh Government Response

Statutory consultees

We acknowledge the importance of including statutory consultees in the consenting process, particularly due to their knowledge and expertise in specific areas. Detailed information and proposals relating to statutory consultees engaging in the consenting process will be subject to further consultation.

Taking account of legislation and policy

Introducing a bespoke, unified consenting regime in Wales will require detailed consideration of existing legislation and policy and how this will be included within the consenting process. This is being undertaken.

Secondary consents

We agree a 'one stop shop' will require ongoing conversations with normal consenting authorities to ensure any secondary consents attached to a WIC can be delivered in a timely manner, without compromising material considerations.

General comments

We have considered proposed developments having potential cross-border issues between Wales and England and how this may affect notification and consultation proposals; however, we are only able to legislate for proposed developments, or parts of development, within Wales or Welsh waters.

We will ensure the role of LPAs is not undervalued by ensuring they play a key role in the consenting process from the earliest opportunity. We will also encourage developers to begin an early dialogue with LPAs when developing their project; however, we do not consider it appropriate for pre-application discussions with LPAs to be a mandatory requirement.

Further details, such as fast tracking, enforcement and other procedural matters will be subject to more detailed consultation.

Next steps

- 3.81 It is our intention to progress our proposals in relation to the principles for a unified consenting regime in Wales, however, we acknowledge more detailed proposals are required on various aspects of the process. We will address these in a future consultation on the detail of the process.

Q7	Do you agree with our proposals to remove the consenting of infrastructure from the Developments of National Significance set out under the Town and Country Planning Act 1990 process to an entirely new consenting regime? If not, why not?
The consultation proposes to create a single and unified consenting process in Wales which builds upon the principles of DNS, and which has a wider scope to capture other consent types. This new proposal will replace the current DNS process in its entirety and partially remove other regulatory processes.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	3	3	0	4	10
B	Local Authorities (including National Park Authorities)	4	2	0	4	10
C	Government Agency/Other Public Sector	2	1	0	9	12
D	Professional Bodies/Interest Groups	0	2	0	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		10	8	1	27	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	18	1
Overall Percentage	94%	6%

Statistical review

- 3.82 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 94% agreed with the proposal to remove the consenting of infrastructure from the Developments of National Significance set out under the Town and Country Planning Act 1990 process to an entirely new consenting regime.
- 3.83 Business / Planning Consultants, LPAs, Government Agency / Other Public Sector and Professional Body / Interest Group respondents all agreed with the proposal with no objections. Only one person disagreed with the proposal, who is represented within the 'Others' category of respondents.

Key themes

- 3.84 The key themes in response to question 7 were as follows:
- A significant majority agree and support the proposal for removing the consenting of infrastructure from the Developments of National Significance set out under the Town and Country Planning Act 1990 process to an entirely new consenting regime; and
 - Although in agreement, respondents commented greater detail is needed on how a unified consenting regime will operate in practice.

Overview

- 3.85 Responses concluded removing DNS and creating a new, unified consenting regime would be supported. However, any changes must ensure flexibility to all participants, a strengthened role for community engagement and must not be overly complex or costly for potential developers.
- 3.86 One Business commented on how it would be most undesirable for ordinary planning permission, DNS and a new consenting regime to all coexist and another Business justified their support for the proposal by suggesting the current DNS regime is not designed to handle the complexity associated with larger scale projects, something which could be achieved by introducing a new, unified consenting regime.
- 3.87 Although supporting the proposal in principle, a number of respondents considered greater detail on how the processes and procedures involved as part of a new consenting regime would be beneficial.
- 3.88 For example, one LPA queried how the process would operate in terms of granting secondary consents and whether the organisations who currently grant them would continue to do so, or whether this would be transferred to the Welsh Ministers. Another LPA commented a clear timetable for implementation also must be outlined.
- 3.89 Similarly, a Professional Body / Interest Group requested further information on the role and scope of statutory consultees.

- 3.90 Two Business / Planning Consultants responded stating it would be preferable to grant a deemed planning permission rather than to dis-apply the need for it, as this would facilitate resolution of detailed matters, including minor post-consent variations at the local level.
- 3.91 An LPA, although supportive, commented the proposed new regime represents a continuation of a movement away from local decision-making to national decision-making and as such, local participation must be fully part of a new consenting process in order for it to receive public support.
- 3.92 A Professional Body / Interest Group and a Business both outlined their support for the proposed consenting regime, as well as the approach of adopting compulsory and optional thresholds, which will enable a choice of the most appropriate consenting route for applicants.
- 3.93 Other, more general comments included a Government Agency suggesting the PINS website should be updated to accommodate a new consenting regime as it is not clear and somewhat confusing when compared to the formatting of the NSIP website, as well as a Business commenting a new consenting process will need to be supported by an adequately resourced department.
- 3.94 One response was received which was not relevant to the question.

Q7 Welsh Government Response

Greater detail on processes and procedures

Greater detail on the processes and procedures which will govern a unified consenting regime will be subject to further consultation in the future, pending additional research and evidence gathering. This will also include information relating to the role and scope of statutory consultees.

Local participation

Participation of both local communities and LPAs will be an important part of the proposed consenting regime. It is our intention for developers to work closely with communities and LPAs at the earliest possible stage of the development process. We also propose numerous opportunities for local communities' to put forward representations from the pre-application stage, through to examination. Similarly, we acknowledge the importance of LPAs and will seek opportunities for developers to utilise their knowledge and expertise of local areas during the consenting process.

Deemed planning permissions

We acknowledge the possibility of deeming certain permissions rather

than dis-applying them, however, further research and consultation will be required before a formal decision is made on how best to proceed.

Next steps

- 3.95 We propose to continue pursuing the possibility of developing a new, unified consenting regime for Wales, following newly devolved powers from the Wales Act 2017.

Q8	Do you agree with the principle of optional thresholds for Welsh Infrastructure Projects? If not, why not?
The consultation proposes to introduce 'optional' thresholds for Welsh Infrastructure Projects alongside compulsory thresholds. Whereas projects which fall within the compulsory thresholds would be required to obtain a WIC, those projects within the optional thresholds would have a choice of obtaining a WIC or planning permission from the LPA.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	2	1	5	10
B	Local Authorities (including National Park Authorities)	1	5	0	4	10
C	Government Agency/Other Public Sector	3	0	1	8	12
D	Professional Bodies/Interest Groups	0	2	0	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		7	9	3	28	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	16	3
Overall Percentage	84%	16%

Statistical review

- 3.96 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 84% agreed with the proposal for introducing optional thresholds, with only three respondents disagreeing (one from the Business / Planning Consultant category, one from the Government Agency / Other Public Sector category and one from the 'Others' category).
- 3.97 Responses from the LPA and Professional Bodies / Interest Groups categories were all supportive of the proposal, with no objections from these groups.

Key themes

- 3.98 The key themes in response to question 8 were as follows:
- Overall support for the proposal;
 - The introduction of 'optional' thresholds will help promote and achieve flexibility in the infrastructure consenting process; and
 - Further detail and guidance relating to optional thresholds would be beneficial to the development industry on what types of projects should be considered for the WIC route and which should not.

Overview

- 3.99 Responses concluded any proposals must ensure flexibility to all participants, a strengthened role for communities and must not add complexity or cost.
- 3.100 LPAs were particularly positive towards the proposal commenting it is reassuring there is a recognition LPA determination periods for certain types of technologies can be quicker than the DNS process.
- 3.101 One LPA agreed with the use of optional thresholds for many types of development. LPAs will be able to demonstrate to developers they should be the determining body and developers may choose to use the Welsh Ministers if they do not think the LPA is performing sufficiently, thus encouraging LPAs to improve their service.
- 3.102 Another LPA queried whether separate consents (where required) would be considered under the existing consenting regimes and whether the same type of project could either be subject to a WIC application or an application under the Town and Country Planning Act 1990, depending on the view taken by the Welsh Ministers.
- 3.103 Similarly, another query was raised by an LPA requesting a position on providing guidance to assist the development industry and LPAs as to what projects should be considered by the WIC process and which should not.

- 3.104 However, although generally in agreement with the proposal, one LPA expressed concern whether optional thresholds is the best vehicle to achieve flexibility and suggested it could be better to create a scoping process at the pre-application stage to assess whether the application should be dealt with by Welsh Ministers or the LPA rather than leaving it to developers to decide.
- 3.105 Businesses / Planning Consultants were also generally positive towards the proposal, stating the potential for developers to choose their preferred consenting route is supported, as long as the thresholds are clear and easy to interpret. However, comments were put also put forward stating it is critical for clear policy and guidance to be put in place, setting out the criteria under which the choice can be made and whether the Welsh Ministers will retain any powers of intervention.
- 3.106 A Business / Planning Consultant also suggested where a project falls within an 'optional' category, applicants should consult both the Welsh Ministers and LPA to seek their guidance on the appropriate procedural route.
- 3.107 Of those who disagreed with the proposal, one respondent stated the threshold category relating to overhead electric lines associated with a generating station should not include any alteration or upgrading of a line up to an including 132KV, where there is existing exemption regulations which set out statutory requirements for these types of projects.
- 3.108 A Government Agency / Other Public Sector respondent stated the principle of optional thresholds can cause confusion as to the appropriate consenting regime for certain projects, including the framework and timetable to be followed. The respondent also considered further clarity is required on how a decision on the procedure for optional projects is made by applicants and how this affects the determining body. Furthermore, clarity was sought for statutory frameworks and time periods to be applied to statutory consultees, and other bodies, such as those acting as the relevant regulator.
- 3.109 One response was received which was not relevant to the question.

Q8	Welsh Government Response
	<p><u>Separate consents</u></p> <p>It is our intention for any separate consents required as part of a WIC to included as part of one consent or deemed.</p> <p><u>Guidance</u></p> <p>Although it is our intention to publish optional thresholds, we will also seek to provide further clarity on the options developers have where a potential project falls within the 'optional' thresholds to aid in deciding which route is their preference.</p>

Amendments to proposed thresholds

Proposed threshold 1E will include an exemption where there are existing exemption regulations which set out statutory requirements for these types of projects, as from 1 April 2019, these will be in the form of permitted development rights which we do not propose to alter, at present.

Statutory consultees

More detailed considerations relating to statutory consultees, including frameworks, timescales etc. will be subject to further consultation.

Appropriate consenting route

While we are offering prospective applicants some flexibility to choose the most appropriate consenting route, we have been convinced powers of intervention by the Welsh Ministers are required. This is to ensure developments which are of sufficient significance and complexity are determined by the appropriate authority. In response, we propose to establish a direction-making power to enable the Welsh Ministers to determine who the appropriate authority would be in advance of any pre-application consultation.

Next steps

- 3.110 It is our intention to progress by introducing both compulsory and optional thresholds as part of a unified consenting process, which will have benefits for all parties involved.
- 3.111 Although applicants can initially make a judgement on whether a proposed project falling within the 'optional' thresholds, we have been convinced it will ultimately be the Welsh Ministers decision on which route an application should take. It is intended to clarify where these powers are to be used in guidance and how they would operate in practice.

Q9	Do you agree it is for the Welsh Ministers to ultimately decide on a case-by-case basis whether an optional Welsh Infrastructure Project qualifies as such? If not, why not?
The consultation proposes applicants can choose whether their proposed development should be consented via a WIC or not, where the proposed development falls within the 'optional' thresholds. However, the consultation also proposes the final decisions on these matters will be determined by the Welsh Ministers.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	4	1	4	10
B	Local Authorities (including National Park Authorities)	1	5	0	4	10
C	Government Agency/Other Public Sector	2	0	1	9	12
D	Professional Bodies/Interest Groups	0	1	0	8	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		5	10	3	29	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	3
Overall Percentage	83%	17%

Statistical review

- 3.112 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 83% agreed with the proposal for the Welsh Ministers to ultimately decide on a case-by-case basis whether an optional Welsh Infrastructure Project qualifies as such.
- 3.113 Business / Planning Consultants, LPAs and Professional Body / Interest Group respondents all agreed with the proposal with no objections. Two respondents disagreed with the proposal, one from the Government Agency / Other Public Sector category and one from the 'Others' category.

Key themes

- 3.114 The key themes in response to question 9 were as follows:
- The majority of respondents agree and support the proposal for the Welsh Ministers to ultimately decide on a case-by-case basis whether an optional Welsh Infrastructure Project qualifies as such; and
 - Uncertainty around whether it is the applicant or the Welsh Ministers who make the final decision on whether a proposed development qualifies as a WIP via the 'optional' threshold route.

Overview

- 3.115 Respondents were generally supportive of the proposal, with an LPA and two Business / Planning Consultant respondents commenting it would be logical for the decision to rest with the Welsh Ministers if a project is deemed to be of national significance.
- 3.116 However, a number of respondents who were in agreement with the proposal, also raised some minor concerns. One LPA commented they do not have the power to re-direct developers to the Welsh Ministers where they consider the impacts of a proposed development qualifies it as a WIP, which results in an imbalance of power in favour of developers.
- 3.117 In addition to this, a Business commented clear policy and guidance should be put in place, setting out the criteria under which the choice can be made and whether the Welsh Ministers would retain any powers of intervention. The introduction of guidance was also supported by an LPA and a Government Agency / Other Public Sector respondents.
- 3.118 Another Business / Planning Consultant responded stating there needs to be some generally applicable procedure for determining whether a particular project would be treated as a WIP, and whether it is acceptable to include any associated development (which is not itself a WIP) in the scope of a WIC application.

- 3.119 Although in agreement with the proposal, a number of respondents suggested it was unclear on who would make the final decision on whether a proposed development would qualify as a WIP.
- 3.120 One LPA suggested the decision should be for the Welsh Ministers to make, at the earliest opportunity and with the relevant LPA(s) consulted at this stage. Similarly, a Professional Body / Interest Group echoed this view and also suggested a mechanism should be made available whereby a developer can obtain formal confirmation their application will be treated as a WIC or not to remove any doubt.
- 3.121 Of those who disagreed with the proposal, a Professional Body / Interest Group respondent and a Business / Planning Consultant respondent questioned the purpose of providing 'optional' thresholds for developers to decide their consenting route, as this could potentially undermine certainty in the process. It was also suggested consideration should be given as to when, during the process, a decision is made on which consenting route should be taken.
- 3.122 Furthermore, another respondent stated their disapproval with the proposal, claiming there should be no ambiguity on which consenting route could be taken and should be determined solely on the basis of thresholds.
- 3.123 One response was received which was not relevant to the question.

Q9	Welsh Government Response
	<p><u>Determination of an 'optional' WIP</u></p> <p>Where a proposed development falls within a published 'optional' threshold applicants can make a decision whether their project should follow the WIC route or be determined at the local level, depending on their preference. This decision should be made at the earliest opportunity during the pre-application stage.</p> <p>However, when this decision is put before the Welsh Ministers, they may reach a different conclusion on whether a proposed project is of national significance and should follow the WIC route or not. Therefore, we consider it appropriate for the final decision to be at the discretion of the Welsh Ministers.</p> <p>We consider this to be a suitable proposal, providing clarity and certainty to all parties involved at an early stage, as well as providing applicants a choice of which consenting route is proportionate.</p> <p><u>Guidance</u></p> <p>We acknowledge a new, unified consenting regime for Wales will require guidance aimed at all stakeholders, setting out the detailed processes and</p>

procedures from the pre-application stage, through to post-consent and enforcement. As part of this guidance, we will seek to provide clarity on 'optional' development thresholds and the options available to developers, as well as the instances in which the Welsh Ministers may determine an application be determined by them.

Next steps

- 3.124 As certain proposed developments put forward as part of a unified consenting regime may be considered nationally significant by one party, but not another, we consider it appropriate for the Welsh Ministers to be the determining authority on which consenting route should be taken, when considering proposals which fall within an 'optional' threshold.
- 3.125 Therefore, we are proposing to progress this proposal and make the Welsh Ministers the determiner as to who is the consenting authority. We will consult on and develop proposals to give the Welsh Ministers a direction-making power to require a proposal to be determined by them in the case of optional WIPs. We anticipate this direction-making power may be used in advance of any pre-application consultation being undertaken.

Q10	Do you agree designation in the National Development Framework for Wales should be a criteria as to whether a development qualifies as a Welsh Infrastructure Project? If not, why not?
The consultation proposes development which is designated as of national significance via the new WIC arrangements will remain to be determined at the national level. It is also proposed any designation in the National Development Framework will override the ability to submit to the normal consenting authority.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	3	1	5	10
B	Local Authorities (including National Park Authorities)	2	4	0	4	10
C	Government Agency/Other Public Sector	3	0	1	8	12
D	Professional Bodies/Interest Groups	0	2	0	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	0	2	0	1	3
Total all respondents		6	11	2	27	45

	Yes/Yes subject to comment	No
Total Respondents indicating a response	17	2
Overall Percentage	89%	11%

Statistical review

- 3.126 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 89% agreed with the proposal for development which is designated as of national significance via the new WIC arrangements will remain to be determined at the national level.
- 3.127 Business / Planning Consultants, LPAs, Professional Body / Interest Groups and those based in the 'Others' category all agreed with the proposal with no objections. Only one Government Agency / Other Public Sector respondent and one Business respondent disagreed with the proposal.

Key themes

- 3.128 The key themes in response to question 10 were as follows:
- A significant majority agree and support the proposal for development which is designated as of national significance via the new WIC arrangements will remain to be determined at the national level; and
 - Further detail is required with it being so early in the both the NDF and WIC processes.

Overview

- 3.129 A number of respondents sought further clarification on how the NDF and WIP process would interact with one another. One LPA stated it was unclear at present what developments WIPs will comprise of and how clearly a development will be defined in the NDF. Another LPA stated a strong policy approach evidenced in the NDF and PPW should be promoted to ensure infrastructure schemes are appropriate.
- 3.130 Similarly, a Professional Body / Interest Group and a Business commented it is difficult to provide any detailed representations to the proposals, given it is so early in the both the NDF and WIP processes.
- 3.131 Further to comments requesting greater detail on the relationship between the NDF and WIPs, more specific comments were presented by respondents.
- 3.132 Although in agreement with the proposal in principle, a Professional Body / Interest Group and a Business queried the need for both WIC thresholds and designation in the NDF as it is considered there are likely to be very few projects included in the NDF for which the proposed WIC regime would be appropriate, which are not already caught by the thresholds.
- 3.133 A Professional Body / Interest Group and a Business both agreed with the proposal, claiming it would override the ability to submit an application to the normal consenting authority under the Welsh Government's proposals for 'optional infrastructure projects', including the ability for the Welsh Ministers to ultimately make the decision on whether the project is a WIP.

- 3.134 Two LPAs considered a potential conflict of interest if the Welsh Ministers designate an area of Wales for major development and then determine any subsequent application(s). They sought assurances of a full assessment and scrutiny of local views being taken into account.
- 3.135 A Business / Planning Consultant neither agreed nor disagreed with the proposal, however, stated in principle, a full range of developments should be capable of being authorised by a WIC, provided they are at scale and of national significance.
- 3.136 Of those respondents disagreeing with the proposal, one Business stated there would be no guarantee the NDF would be kept up to date to allow for projects to be included as and when they come forward. Similarly, a Government Agency / Other Public Sector respondent commented the NDF would not be suitable as a mechanism for determination for offshore projects and stated it is unclear how the NDF and WNMP would be considered in parallel in the relevant decision-making regimes.
- 3.137 One response was received which was not relevant to the question.

Q10 Welsh Government Response

General comments relating to the NDF

We acknowledge the NDF is continuing to be developed. While this is the case, we are seeking views on the principle of designations in the NDF becoming WIPs. Further detail on the type and nature of such projects will be published as part of the NDF.

Conflict of interest

We do not consider there to be a conflict of interest with the Welsh Ministers designating areas for major development and then being the determining authority for applications as this approach is reflected at the local level through LDP allocations. While such allocations exist, both LPAs and the Welsh Ministers continue to determine applications against the extant development plan as well as other necessary material considerations.

Offshore consenting

The NDF will not be considered as the main policy basis for offshore developments, only onshore. It is intended the Welsh National Marine Plan ("WNMP") will be the main policy basis for offshore consenting.

Next steps

- 3.138 It is proposed to progress our proposals to use both the NDF and the WNMP as the main policy basis for developments onshore and offshore, respectively.
- 3.139 We acknowledge and accept both the NDF and the WIP process are both being developed and are consulting on principles at present. As further detail emerges, these will be consulted upon as part of the NDF's statement of public participation.

Q11	Do you agree with the proposed compulsory and optional thresholds for Welsh Infrastructure Projects? If not, why not?
The consultation proposes categories of development for both compulsory and optional thresholds. Proposed developments falling within the compulsory thresholds must be determined via the WIC process, whereas those falling within the optional thresholds may be determined either via the WIC process, or at the local level. This, however, will be at the discretion of the Welsh Ministers.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	0	3	1	6	10
B	Local Authorities (including National Park Authorities)	2	4	0	4	10
C	Government Agency/Other Public Sector	4	0	0	8	12
D	Professional Bodies/Interest Groups	0	2	0	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	0	1	1	1	3
Total all respondents		6	10	2	28	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	16	2
Overall Percentage	88%	12%

Statistical review

- 3.140 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 88% agreed with the proposed compulsory and optional thresholds.
- 3.141 LPAs, Government Agency / Other Public Sector and Professional Bodies / Interest Group respondents all supported the proposal with no objection.
- 3.142 A mixed response was received from the Business / Planning Consultant category with two respondents stating their support for the proposal and one respondent disagreeing. Similarly, one respondent from the 'Others' category agreed with the proposal and one respondent disagreed. Those from the Voluntary Sector did not respond to the consultation question.

Key themes

- 3.143 The key themes in response to question 11 were as follows:
- Overall support for the proposed compulsory and optional thresholds; and
 - A number of respondents suggested amendments to both the proposed and optional thresholds.

Overview

- 3.144 Generally, respondents agreed with the proposed compulsory and optional thresholds, with comments being received which considered them appropriate, so long as they are clear and unequivocal.
- 3.145 A number of respondents, although in agreement with the proposal, suggested amendments to the proposed thresholds, which included:
- Site area thresholds should be considered;
 - Solar schemes being measured by reference to their AC export capacity rather than their nominal DC capacity;
 - An optional 1MW threshold for hydro-electric schemes;
 - The 'alteration or extension' section being rephrased where relevant to: "The alteration or extension of a generating station, where it proposes to increase the installed generating capacity by at least 10MW up to the lower limit of the Compulsory Threshold;
 - Aligning the optional threshold to those for onshore generating stations (i.e. amending from 1MW-50MW to 10MW-50MW) to achieve harmonisation for developments which straddle both onshore and offshore;
 - The compulsory threshold for overhead electric lines should include 'replacement lines' which do not reflect the Electricity Act 1989 exemptions and are currently progressed as NSIPs via the Planning Act 2008;

- Using average capacity of transfers in preference to annual volume thresholds, in relation to water transfers;
- Ports and Harbours should indicate a potential handling capacity of 250,000 tonnes or more;
- The 'ten foot' metric for container units should read 'twenty foot' which is a standard measurement unit for TEU;
- Replace "Strategically Important Industrial Minerals of over 150ha surface or underground area" for "the winning and working of minerals" and
- A 'refinery' category should be included.

3.146 The majority of the suggestions were supplemented by very little evidence to substantiate a change.

3.147 An LPA also commented in relation to categories 3A and 3D of Table 4.3 of the consultation paper in respect of Highways and Ports / Harbours, as these proposed thresholds rely on a judgement as to whether there exists "significant impact on the environment" and are too ambiguous.

3.148 Another LPA commented the definition of unconventional oil and gas states it "does not include the making of exploratory boreholes which do not involve the carrying out of such unconventional extraction techniques". This could be confusing as to what is and what is not considered to be within the definition of 'unconventional oil and gas' as distinct from the the drilling of boreholes for 'conventional' extraction.

3.149 A Professional Body / Interest Group sought clarity on whether we are intending for both deep investigative boreholes and Geological Disposal Facilities themselves to be included as WIPs.

3.150 Of those who disagreed with the proposal, one Business / Planning Consultant stated it is illogical to include a compulsory threshold of 50MW for a new onshore generating station and then any alteration or extension of an existing generating station as an optional WIP provided the capacity of the generating station as extended did not exceed 350 MW. They argued this should be a compulsory WIP. The respondent also commented there is significant potential for further hydro power to be included as part of the consenting regime.

Q11 Welsh Government Response

Potential threshold amendments

A number of thresholds were suggested and our response is set out below:

- *Site area thresholds for energy projects* – At this stage, we do not have sufficient evidence which proves site area thresholds

accurately reflect the impacts of a proposed scheme, requiring consent at the national level. However, we will continue to research and review accurate ways of defining what constitutes a WIP.

- *Solar schemes being measured by AC rather than DC* – To ensure a consistent approach, we consider it more appropriate to measure solar output as specified in the consultation thresholds. As the devolution threshold is set at 350MW, consistency of approach is required between Wales and the UK Government to ensure no doubt over the competence as to which consenting authority is correct.
Optional 1MW for hydro-electric schemes – Hydro electric schemes are captured as part of the proposed consultation thresholds.
- *The 'alteration or extension' section is rephrased where relevant to: "The alteration or extension of a generating station, where it proposes to increase the installed generating capacity by at least 10MW up to the lower limit of the Compulsory Threshold"* – This proposed wording may capture small scale extensions as compulsory WIC projects. The wording set out in the consultation paper is adequate as it is unlikely to capture those developments where the overall installed generating capacity extends beyond the 50MW compulsory threshold for new generating stations but which has a minor overall impact.
- *Aligning the optional threshold to achieve harmonisation for developments which straddle both onshore and offshore* – Although we accept the rationale behind this suggestion, this would result in a marine licence alone being required for up to 10MW. It is not our intention to delegate decision-making for all applications below 10MW to a different body at this stage.
- *Including replacement lines as part of the compulsory threshold for overhead electric lines* – To clarify, the installation of an overhead electric line includes replacement lines where they are not exempt from the requirement for planning permission.
- *Using average capacity of transfers in preference to annual volume thresholds for transfers of water resources* – While average capacity of transfers has been considered, we consider a proposal annual volume in transfer to be a more accurate descriptor of the scale and works required.
- *Ports and Harbours including a potential handling capacity of 250,000 tonnes or more* – The proposed thresholds include an annual increase of 500,000 tonnes in handling capability for facilities for cargo ships. We consider this proportionate in relation to Wales.
- *Including a 'refinery' category* – We do not consider it necessary to include a specific category as our evidence suggests the likelihood of further refineries being built in Wales is low.
- *Geological disposal* – It is the intention for the threshold to capture the construction of one or more boreholes, and the carrying out of any associated excavation, construction or building work, for the main purpose of obtaining information, data or samples to determine the suitability of a site for the construction of or use as a radioactive waste geological disposal facility with a depth in excess of 200 metres.

Ambiguity of threshold descriptions

Where the threshold categories relating to Highways and Ports / Harbours are considered to be ambiguous in their descriptions and require a judgement to be made on whether an impact on the environment will occur, the purpose of this is to enable the Welsh Ministers to decide whether an EIA is required.

It is acknowledged there is an error in the consultation paper relating to the definition of TEU, which should read 'twenty foot equivalent'. We apologise for this error.

Next steps

- 3.151 We will make the necessary amendments or additions as set out in the Welsh Government response above. As the thresholds for WIPs are intended to be flexible and responsive, we will continue to review these thresholds as new evidence comes to light.

Q12	Do you agree with our proposals to remove the need for consent under the Electricity Act 1989 for all development in the Welsh inshore area? If not, why not?
The consultation proposes removing the need for consent under the Electricity Act 1989 for all development in the Welsh inshore area, instead, placing this consent in the unified WIC process.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	3	1	5	9
B	Local Authorities (including National Park Authorities)	6	0	0	4	10
C	Government Agency/Other Public Sector	2	1	1	8	12
D	Professional Bodies/Interest Groups	0	0	1	8	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	0	1	1	1	3
Total all respondents		9	5	4	28	45

	Yes/Yes subject to comment	No
Total Respondents indicating a response	14	4
Overall Percentage	77%	23%

Statistical review

- 3.152 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 77% agreed with the proposal to remove the need for consent under the Electricity Act 1989 for all development in the Welsh inshore area.
- 3.153 LPAs supported the proposal with no objections and the majority of Business / Planning Consultant and Government Agency / Other Public Sector respondents also agreed, although a minority within these groups were not supportive. Those from the Professional Body / Interest Group category also responded negatively.
- 3.154 A mixed response was received from the 'Others' category with one respondent stating their support for the proposal, with the other respondent in this category disagreeing with the proposal.

Key themes

- 3.155 The key themes in response to question 12 were as follows:
- Overall support for the proposal for removing the need for consent under the Electricity Act 1989 for all development in the Welsh inshore area; and
 - Further, detailed consideration is required into the impacts of removing the need for consent under the Electricity Act 1989.

Overview

- 3.156 Generally, respondents agreed with the proposal set out in the consultation paper, with LPAs in particular commenting the proposed consenting system is an adequate replacement for the Electricity Act 1989. This was echoed by a Professional Body / Interest Group and a Business.
- 3.157 However, a number of supportive responses were submitted with caveats requiring further detailed information. For example, one Business / Planning Consultant supported the proposal, subject to the detailed consideration of the associated issues being undertaken as part of further consultation.
- 3.158 Similarly, a Government Agency / Other Public Sector respondent suggested the removal of the need for Electricity Act 1989 permissions would require careful consideration in the handling and establishment of navigation safety zones.
- 3.159 A Business / Planning Consultant commented although they support the proposal, developers must be able to deal with onshore infrastructure (i.e. grid connections, transmissions etc.) at the same time, without additional processes relative to the offshore elements of a scheme.

- 3.160 Another Business / Planning Consultant commented while they agree a Marine Licence will probably ensure consideration of all the relevant material considerations, further thought should be given to whether the Marine and Coastal Access Act should be modified to ensure that a marine licence granted as proposed in the Welsh inshore area can authorise consequential interference with navigation rights.
- 3.161 Of those who disagreed with the proposal, a Professional Body / Interest Group and a Business commented the Electricity Act 1989 contains environmental duties which have always been considered important and would no longer apply. Furthermore, the considered it a step too far to remove the operation of the Electricity Act 1989 without much fully consideration of the issues.

Q12 Welsh Government Response

Removal of Electricity Act 1989

In removing the Electricity Act 1989 in the Welsh inshore area it is still proposed to preserve the ability to establish safety zones and ability to interfere with public rights of navigation. Furthermore, robust environmental consideration is proposed through the replacement WIC process. It is not the intention to lose any flexibility or other powers under the Electricity Act 1989 as part of the WIC process.

We will continue to undertake detailed legislative analysis to ensure no powers are lost.

Amendments to the Marine and Coastal Access Act 2009

Such amendments are outside the scope of this consultation.

Next steps

- 3.162 It is the intention to progress our proposals to replace the Electricity Act 1989 with the WIC process in the Welsh inshore area. While this is the case, we will ensure no flexibility or powers are lost as a consequence of this legislative change.

Q13	Do you agree with our proposals for a Welsh Infrastructure Consent to be either in the form of a standardised consent or a statutory instrument, dependent of the type of application made? If not, why not?
The consultation proposes WICs be in the form of standardised consents to offer familiarity to communities and authorities who must discharge conditions, however, where a statutory instrument is required, this will be provided instead. It is proposed legislation will set out the circumstances in which a statutory consent must be provided.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	3	0	5	10
B	Local Authorities (including National Park Authorities)	2	3	0	5	10
C	Government Agency/Other Public Sector	1	1	1	9	12
D	Professional Bodies/Interest Groups	0	2	0	7	9
E	Voluntary Sector	0	1	0	1	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		6	10	2	28	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	16	2
Overall Percentage	88%	12%

Statistical review

- 3.163 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 88% agreed with the proposal for a WIC to be either in the form of a standardised consent or a statutory instrument, dependent of the type of application made.
- 3.164 Business / Planning Consultant, LPAs, Professional Bodies / Interest Groups and Voluntary Sector respondents all agreed with the proposal, with no objections. The only objections came from the Government Agency / Other Public Sector and 'Others' categories where one objection from each of these categories was recorded.

Key themes

- 3.165 The key themes in response to question 13 were as follows:
- Overall support for the proposal for a WIC to be either in the form of a standardised consent or a statutory instrument, dependent of the type of application made; and
 - Further clarification is required on aspects such as the form and content of both standardised consents and statutory instruments.

Overview

- 3.166 Generally, respondents agreed with the proposal suggesting it adds certainty, proportionality and flexibility for developers and recognises the differing complexities and consenting requirements of infrastructure project.
- 3.167 A number of responses were focused on receiving further clarification on a variety of matters, despite agreeing with the proposal in principle. For example, one LPA sought further clarification on who the responsible authority would be for discharging conditions as part of the WIC process as they did not consider it appropriate for LPAs to discharge conditions where another consenting authority would be better placed to do so.
- 3.168 Similarly, a Professional Body / Interest Group sought further clarification on the costs of drafting and time taken to produce a decision for both a standardised consent and a statutory instrument, with another respondent from this group seeking additional information on when a standardised consent or a statutory instrument would apply. An LPA reflected these comments.
- 3.169 A Business / Planning Consultant suggested further consideration be given to how secondary consents will be discharged and enforced, commenting they should, as a far as possible, be uniform in structure, content and legal effect. On a similar theme, a respondent from the Voluntary Sector stated certain protective provisions should be included as part of a WIC.

- 3.170 A Business / Planning Consultant agreed with the proposal and responded by recommending as far as possible, the form of consent and conditions remains the same whether given by a standard consent or by statutory instrument.
- 3.171 Alternatively, a Professional Body / Interest Group suggested for CPO aspects of statutory instruments and standardised consents, there will always be a need to tailor the precise powers sought to a project and therefore, it would not be possible to have a standardised set of powers for all statutory instruments and standardised consents.
- 3.172 One LPA commented although they agree with the proposal, consideration should be given to consents only being given by statutory instruments as this would be consistent with other major projects of national importance and would be on the same foot, legally.
- 3.173 Of those who disagreed with the proposal, a Government Agency / Public Sector respondent commented in the context of standardised consents, the proposal may be too complex to achieve for WICs which have deemed licences and permits and further clarity should be provided.
- 3.174 Furthermore, comments were put forward which disagreed with the proposal, suggesting there is no benefit to issuing a statutory instrument for optional schemes and because the proposal was not explained in sufficient detail to explain why a statutory instrument is appropriate.

Q13 Welsh Government Response

Form and content of consents

At present, it is proposed to establish a multi-body approach to the discharge of conditions, with the consent specifying who will be the discharging authority for each condition or group of conditions.

Addressing the differences between issuing a conventional consent or a Statutory Instrument, we do not consider this difference will alter the strength of any powers for the purposes of enforceability. This distinction is to be established as certain rights may be interfered with a consequence of the one-stop shop approach, which may only be altered through a Statutory Instrument.

Removal of standardised consents

Although only introducing statutory instruments as a means on consenting, similar to the approach taken by the DCO process, would promote consistency, it does not offer the flexibility we consider is important in providing a unified consenting regime, where a statutory instrument may not be appropriate, or considered excessive for certain consenting projects. A more conventional consent is considered proportionate in such instances.

Next steps

- 3.175 We will continue to progress our proposals relating to issuing a standard or conventional consent for less complex projects, as we consider this to be a proportionate approach commensurate with the flexibility we aim to offer as part of the WIC process.

Q14	Do you agree with the notion of fast-tracking certain classes of development? If yes, please specify where this may be suitable.
The consultation explores ways to add fast-tracking elements for certain classes or types of WIP to ensure a more proportionate decision-making process (i.e. where applications are considered to be uncontroversial and do not give rise to objections).	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	5	0	4	10
B	Local Authorities (including National Park Authorities)	1	5	0	4	10
C	Government Agency/Other Public Sector	1	0	3	8	12
D	Professional Bodies/Interest Groups	0	3	0	6	9
E	Voluntary Sector	0	0	1	1	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		4	13	5	24	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	17	5
Overall Percentage	77%	23%

Statistical review

- 3.176 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 77% agreed with the proposal to introduce fast-tracking elements for certain classes or types of WIP to ensure a more proportionate decision-making process.
- 3.177 Business / Planning Consultant, LPAs and Professional Bodies / Interest Groups and Voluntary Sector respondents all agreed with the proposal, with no objections. The majority of Government Agency / Other Public Sector respondents disagreed with the proposal, while the sole respondent from the Voluntary Sector also disagreed.
- 3.178 Responses from the 'Others' category were mixed with one respondent agreeing with the proposal and one respondent disagreeing.

Key themes

- 3.179 The key themes in response to question 14 were as follows:
- Overall support for the proposal to fast-track certain classes of development; and
 - The concept of fast-tracking needs further consideration.

Overview

- 3.180 LPAs were supportive of the proposal with no objections received from respondents in this category. One LPA commented where a single consent is needed, and the development is at the lower end of any scale threshold. It may be worth exploring the use of fast-tracking where it is clear from the initial stages of the process that a proposal, whatever its scale, is uncontroversial.
- 3.181 Similarly, another LPA identified an anomaly in the DNS legislation which is claimed to have failed to take into account circumstances where permission has been issued but developers have failed to comply with pre-commencement conditions, thus requiring a new application under s73A to be made. This was identified as a circumstance in which fast tracking could be applied.
- 3.182 Further comments received from LPAs, although in agreement with the principle of the proposal, queried what type of infrastructure development which would warrant fast tracking as the nature of these types of development are large scale and of national importance for Wales and therefore, unlikely to be uncontroversial.
- 3.183 Business / Planning Consultant respondents were equally supportive of the proposal in principle stating an agile regime would help to provide a more proportionate decision making process.

- 3.184 However, some respondents from this category raised minor reservations. For example, one respondent stated they thought it would be difficult to identify specific classes of development which are suitable for fast-tracking in the broad sense. Furthermore, another Business / Planning Consultant stated their agreement with the proposal, although felt fast tracking should be judged on a case-by-case basis subject to specific criteria focussed on the complexity and scale of impacts of proposed development.
- 3.185 Additional comments received from respondents stated the concept of fast tracking is not developed in enough detail in the consultation paper, classes of development should be reviewed regularly and it should not be possible to fast track cases where compulsory powers are being sought.
- 3.186 A Government Agency / Other Public Sector respondent commented they agreed with the proposal in principle, provided that the technical assessment of impacts and application quality is not compromised; transparency and accountability is not impeded. Furthermore, fast tracking should not be utilised to by-pass the necessary assessments and scrutiny of an application.
- 3.187 A Business / Planning Consultant neither agreed nor disagreed with the proposal, however, suggested if fast tracking is to be considered, there should be a process for allowing stakeholders to make comments on the proposal before the Welsh Ministers proceed to examination.
- 3.188 Of those who disagreed with the proposal, a Government Agency / Public Sector respondent suggested the proposal appeared to conflict with the principle of having optional thresholds and caution should be taken to ensure timescales should not be the dominant factor in the consultation process.
- 3.189 A representative from the Voluntary Sector disagreed with the proposal with concerns any application which is fast tracked would be subject to reduced consultation requirements. This was also raised by an LPA, although they supported the proposal in principle.
- 3.190 A Business / Planning Consultant commented fast tracking should not be considered as every application should be dealt with as quickly as possible.

Q14 Welsh Government Response

Principle of fast tracking applications

The responses to the consultation shows a clear appetite to fast-track certain infrastructure proposals where the circumstances allow.

We acknowledge and understand the lack of detail included within the consultation paper has made it difficult for respondents to provide comments on this particular issue and we will seek to publish a further consultation document which will include a greater level of detail on how we envisage fast-tracking applications will operate in practice and under

which circumstances this will occur.

Section 73A applications

An anomaly was identified by one respondent relating to section 73A applications under the Town and Country Planning Act 1990. As such applications can vary in scale and complexity, they may not be appropriate for fast-tracking.

Next steps

- 3.191 We intend to progress with our proposals to introduce the ability for applications to be fast-tracked through the determination process, where certain criteria are met such as where no objections are made, or where applications are of limited capacity. More detail around the process of fast-tracking in general and the specific circumstances in which this may occur will be subject to further consultation.

Q15	Do you agree with our proposals to dis-apply the need for certain authorisations attached to the main development? If yes, please specify which authorisations may be included in a Welsh Infrastructure Consent?
The consultation proposes to give the option to scheme promoters to rationalise the different secondary consents required to implement a scheme into one main consent (e.g. marine licences, planning permission for associated development and environmental permits).	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	2	1	6	10
B	Local Authorities (including National Park Authorities)	3	3	0	4	10
C	Government Agency/Other Public Sector	3	1	0	8	12
D	Professional Bodies/Interest Groups	0	1	1	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	0	1	1	1	3
Total all respondents		7	8	3	28	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	3
Overall Percentage	83%	17%

Statistical review

- 3.192 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 83% agreed with the proposal to dis-apply the need for certain authorisations attached to the main development.
- 3.193 LPAs and Government Agency / Other Public Sector respondents agreed with the proposal with no objections. Business / Planning Consultant responses were mixed, although the majority supported the proposal, with one objection. Similarly, Professional Bodies / Interest Groups and those from the 'Others' category were also mixed in their responses with one respondent agreeing and one disagreeing from each of these groups. Those from the Voluntary Sector did not respond.

Key themes

- 3.194 The key themes in response to question 15 were as follows:
- Overall support for the proposal to dis-apply the need for certain authorisations attached to the main development; and
 - Further information is required to critically assess the impact of dis-applying, or deeming certain permissions as part of a unified consenting regime.

Overview

- 3.195 Generally, respondents agreed with the proposal set out in the consultation paper, however, there was consensus among respondents which suggested the topic should be open for further consultation and development.
- 3.196 One LPA agreed with the proposal in principle, although raised concerns some of the authorisations listed within the consultation paper have their own consultation, scrutiny and appeal process and if the Welsh Ministers make all decisions, there is concern local accountability and knowledge can be lost, along with any form of appeal process.
- 3.197 A Government Agency / Other Public Sector respondent supported the proposal in principle, however, felt the potential to dis-apply or deem permissions requires further, careful consideration to avoid unintended consequences. It was noted whilst there is some overlap with certain permissions such as the marine licensing regime, it should be recognised land use planning and pollution control permitting are not designed for the same purpose and have distinct features. The respondent suggested more detailed proposals would be beneficial to determine the affect of dis-applying or deeming certain permissions as part of the WIC process.
- 3.198 A Business / Planning Consultant suggested consideration should also be given to certificates under section 19 of the Acquisition of Land Act 1981 and

similar provisions certifying the adequacy of land to be given in exchange for open space land being acquired for development.

- 3.199 Of those who disagreed with the proposal, one Professional Body / Interest Group noted reference in the consultation paper to the approval of new connections to public sewers and disagreed with the proposal based on the lack of information relating to this topic and decisions on connections to this type of infrastructure currently lies within provisions set out in the Water Industry Act 1991.
- 3.200 A Business / Planning Consultant also disagreed with the proposal in part, believing it would be preferable for planning permission to be deemed, rather than dis-applied. However, the respondent supported the dis-application of other authorisations.
- 3.201 A Business/Consultant, although agreed with the proposal, questioned whether it was necessary to bring the powers relating to necessary wayleaves, compulsory acquisition, and tree powers in connection with overhead lines into the new regime as they are already subject to a separate regime.
- 3.202 One response was received which was not relevant to the consultation question.

Q15 Welsh Government Response

Local knowledge and accountability

We understand the importance of retaining local knowledge and input in determining applications which are considered of national importance. As part of the proposed unified consenting regime, we have outlined proposals for LPA input in the form of Local Impact Reports, as well as granting Community and Town Councils the same opportunity should they choose to do so. Regarding appeals of decisions, we are not intending to introduce an appeals process; however, there would be an opportunity to challenge decisions by way of Judicial Review.

The list of consents

Detailed research will be undertaken by the Welsh Government into the further scope and nature of secondary consents which will form part of the WIC process. As the WIC processes is developed further, it is intended to undertake a detailed consultation on this prospective list.

Deeming or dis-applying permissions

We acknowledge the option of deeming certain permissions rather than dis-applying them, however, as suggested by a number of respondents, the detailed proposals and potential impacts of this must and will be

considered in greater detail and will be subject to further research and consultation with stakeholders. The ability to either deem or dis-apply an authorisation will be made mainly on legal grounds.

Procedural fairness

It is not the intention to lose any procedural fairness in incorporating secondary consents into the WIC process, and it is the intention participants to the WIC process will have the ability to make representations in relation to and influence secondary consents, where possible.

Next steps

- 3.203 We are intending to progress with our proposal of dis-applying or deeming certain permissions as part of the WIC process and this essentially underpins a unified consenting regime. However, we acknowledge and accept this requires continued consideration and discussions with stakeholders.

Q16	Do you agree the National Development Framework, Wales National Marine Plan and topic-based policy statements should be the policy basis for determining whether Developments of National Significance should proceed or not? If not, why not?
The consultation propose the National Development Framework and the Wales National Marine Plan as the primary policy basis for WICs as both plans are intended to set out where development in Wales and its waters will occur. The consultation also proposed the use of topic-based policy statements to supplement the National Development Framework and the Wales National Marine Plan, in a similar way to National Policy Statements..	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	3	0	6	10
B	Local Authorities (including National Park Authorities)	1	5	2	2	10
C	Government Agency/Other Public Sector	2	1	1	8	12
D	Professional Bodies/Interest Groups	0	2	0	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		5	11	4	26	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	16	4
Overall Percentage	80%	20%

Statistical review

- 3.204 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 80% agreed with the proposal for the National Development Framework, the Wales National Marine Plan and topic—based policy statements being the policy basis for determining whether WIPs should proceed or not.
- 3.205 Business / Planning Consultant and Professional Body / Interest Group respondents responded positively to the proposal with no objections. LPAs and Government Agency / Other Public Sector respondents were also generally positive, however, a small number from these groups did not agree with the proposal.
- 3.206 A mixed response was received from the 'Others' category with one respondent stating their support for the proposal, with the other respondent in this category disagreeing with the proposal.

Key themes

- 3.207 The key themes in response to question 16 were as follows:
- Overall support for the proposal for the National Development Framework, Wales National Marine Plan and topic-based policy statements being the policy basis for determining whether WIPs should proceed or not;
 - More consideration should be given to the role of local plans; and
 - Further detail on the National Development Framework and the Wales National Marine Plan would be beneficial to make more informed comments.

Overview

- 3.208 Generally, respondents agreed with the proposal set out in the consultation paper, although a number of comments suggested further information and detail regarding the National Development Framework, the Wales National Marine Plan and the role of local plans would be beneficial.
- 3.209 One LPA agreed with the proposal in principle, although suggested it will depend on what the final versions of the National Development Framework and the Wales National Marine Plan contain and whether they are detailed enough to be the policy grounding for WIPs.
- 3.210 Another LPA was also in agreement, however, they commented there should be an emphasis on topic-based policy documents or chapters within the National Development Framework, which should lead to a clearer methodology for assessing proposed projects.

- 3.211 A further comment was received by an LPA stating it should be made clear the NDF will be the primary document for WIP decision making and the timelines for the adoption of the NDF and the WIP regimes should dovetail together.
- 3.212 A Professional Body / Interest Group and a Business both commented there needs to be a stronger link between policy and decision making than was set out in the consultation paper.
- 3.213 One respondent from the Business / Planning Consultant category suggested although a strong policy framework is helpful, it will be ineffective unless relevant legislation is co-ordinated. It was suggested the planning system and the environmental protection systems are mutually contradictory and lacking in clarity.
- 3.214 Another Business / Planning Consultant raised concerns over the introduction of topic-based policy statements, suggesting the Welsh Government would simply be reinventing the wheel and the adoption or adaption of existing National Policy Statements would be a more cost effective solution. This concern was also raised by a Professional Body / Interest Group who suggested the NDF and WNMP should be updated instead.
- 3.215 Of those who disagreed with the proposal, one LPA commented it fails to take into account situations where infrastructure proposals cross borders with England and suggested a unified consenting regime for Wales must also have consideration for relevant policy in England (i.e. National Policy Statements, local plans etc.) where potential impacts of development could affect local communities in England living closest to the border.
- 3.216 Another LPA who disagreed with the proposal suggested it is not enough to rely solely on the National Development Framework and the Wales National Marine Plan as they will be very general in their objectives and proposals and more consideration should be given to Strategic Development Plans and Local Development Plans.
- 3.217 This view was also shared by a Government Agency / Other Public Sector respondent who commented the Wales National Marine Plan is unlikely to be sufficiently prescriptive enough to be a good predictor for application success. The respondent also sought clarity on whether UK National Policy Statements would apply to the new, unified consenting regime.
- 3.218 Although in agreement with the proposal generally, a number of respondents, in particular, LPAs, also commented on the importance of also having consideration for local plans as well as the National Development Framework and the Wales National Marine Plan.
- 3.219 Similar comments were received in relation to Planning Policy Wales from respondents who agreed with the proposal, but felt further information would be beneficial. One Professional Body / Interest Group noted the lack of clarity over the role of the NDF and how it will work in conjunction with Planning Policy Wales. This was also the view of a Business / Planning Consultant,

who also sought further clarification on the hierarchy and order of precedence of relevant policy documents.

Q16 Welsh Government Response

NDF and WNMP

We acknowledge neither the NDF nor WNMP have been adopted by the Welsh Ministers and are still in the development phase, along with the WIP process. While this is the case, these documents have clear objectives as decision making-documents, and work is being undertaken to ensure they are appropriate for this purpose.

It was suggested the NDF and WNMP may not be detailed or prescriptive enough to offer the required policy grounding for the WIP regime. We are intending to introduce additional topic-based policy statements, where necessary. These topic-based policy statements will be the main consideration for areas which the NDF or WNMP do not cover.

We are currently working close with colleagues to ensure a proposed infrastructure consenting regime is dovetailed with the outcomes of the review of planning law in Wales.

Stronger links between policy and legislation

We understand the need for strong links between policy and decision making. This will be achieved by introducing legislation for a unified consenting regime which will provide the processes and procedures for how decisions must be made as well as a direct link between policy and decision-making.

Cross-border issues

We have considered proposed developments having potential cross-border issues between Wales and England and how this may affect notification and consultation proposals; however, we are only to legislate for proposed developments, or parts of development, within the boundary of Wales. In terms of how this will effect notification and consultation requirements, we will set out best practice in guidance which will suggest developers notify all relevant LPAs and communities affected by a proposal, including those in England. However, where part of a proposed development falls within England and subsequently determined by legislative requirements on an England-only basis, certain publicity and notification requirements aimed at relevant LPAs and local communities would already apply.

Adoption of National Policy Statements

National Policy Statements are policy written by the UK Government for decisions by the UK Government. They are not applicable to decisions made by the Welsh Ministers, as they do not reflect Welsh policy.

Next steps

- 3.220 It is proposed to continue with our proposals to use the NDF and WNMP as the policy basis for onshore and offshore consenting respectively, based on the comments received from respondents. We will continue to ensure these documents are adequate for the purpose of decision-making. We also propose to supplement this policy with topic-based policy statements, where necessary. Such statements will be subject to their own consultation process.

Q17	Do you agree with our proposals for pre-application consultation to form the basis of the Welsh Infrastructure Consent process? If not, why not?
The consultation proposes an emphasis on frontloading the consenting process and requires applicants to undertake pre-application consultation as it is essential local communities and relevant stakeholders are made aware of proposed developments which affect them at the earliest opportunity.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	3	1	4	10
B	Local Authorities (including National Park Authorities)	2	4	0	4	10
C	Government Agency/Other Public Sector	4	0	0	8	12
D	Professional Bodies/Interest Groups	1	0	1	7	9
E	Voluntary Sector	0	0	1	1	2
F	Others (other groups not listed)	1	1	0	1	3
Total all respondents		10	8	3	25	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	18	3
Overall Percentage	85%	15%

Statistical review

- 3.221 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 85% agreed with the proposal for introducing pre-application consultation requirements to ensure local communities and relevant stakeholders are made aware of proposed developments which affect them at the earliest opportunity.
- 3.222 LPAs, Government Agency / Other Public Sector respondents and those from the 'Others' category all agreed with the proposal, citing no objections.
- 3.223 A mixed response was received from Business / Planning Consultant and Professional Bodies / Interest Group respondents, whilst the sole respondent from the Voluntary Sector disagreed with the proposal.

Key themes

- 3.224 The key themes in response to question 17 were as follows:
- Overall support with the proposal for pre-application consultation to form the basis of the Welsh Infrastructure Consent process;
 - More information is required on specific aspects of the pre-application consultation process, including fees and cross-border issues; and
 - Any requirements imposed as part of a pre-application consultation process must be meaningful.

Overview

- 3.225 Generally, respondents agreed with the proposal, suggesting it will result in time and cost savings for all those involved, has a clearly defined purpose and will help ensure applications can proceed in a timely manner, whilst including meaningful input from local communities and statutory consultees.
- 3.226 A number of respondents were supportive of the proposal in principle, although raised several points in relation to how any pre-application consultation requirements will operate in practice.
- 3.227 An LPA commented neighbouring cross-border LPAs and local communities outside of Wales may need to be included in the consultees for schemes close to or affecting cross-border areas in England and it is important subsequent legislation and/or guidance is sufficiently robust to ensure this takes place.
- 3.228 Two LPAs sought clarity on fees, stating it would be difficult to apply a set fee on a full cost recovery basis for every case as costs would vary significantly between cases and further information relating to fees would be welcomed.

- 3.229 It was also suggested by an LPA, pre-application engagement with relevant LPAs should be a mandatory requirement for developers.
- 3.230 A Professional Body / Interest Group commented on the proposal with the view pre-application engagement should establish common ground prior to submission, ensure rigour is applied to in-combination assessments and enable opportunities to discuss and test extremely technical evidence.
- 3.231 A Government Agency / Other Public Sector respondent did not respond to the consultation question by outlining whether they support the proposal or not, however, they provided comments in relation to proposed pre-application consultation, stating any engagement must be meaningful and any comments by statutory consultees taken into account. They also commented pre-application reports should show how a proposal has changed during the course of the pre-application process and how statutory consultees with deemed or dis-applied permissions should also be informed of an application at the same time as the Welsh Ministers and LPAs. Finally, it was suggested websites should be required to be maintained until the point a formal decision has been made as this will allow people to refer to previous versions of documents if needed and keep track of progress.
- 3.232 Of those who disagreed with the proposal, one Professional Body / Interest Group commented the effort and expense taken to prepare a full suite of application documents for consultation will mean considerable reluctance to change the application at this stage. These comments were also put forward by a Business / Planning Consultant.
- 3.234 Another Business / Planning Consultant reflected these comments in relation to consulting on a draft application, however, they were supportive of the proposal in principle.
- 3.235 A respondent from the Voluntary Sector disagreed with parts of the proposal, stating they considered the circumstances in which statutory consultees should be consulted should have been clearly defined in the consultation paper. They did, however, agree with the principle of pre-application consultation.
- 3.236 There was also concern among a Government Agency / Other Public Sector respondent who felt developers may not always have enough environmental information during this pre-application consultation stage to enable statutory nature conservation bodies and other stakeholders to be fully aware of all potential environmental impacts from a project.
- 3.237 Two responses was received which was not relevant to the consultation question.

Q17 Welsh Government Response

Cross-border developments

We have considered proposed developments having potential cross-border issues between Wales and England and how this may affect notification and consultation proposals; however, we are only to legislate for proposed developments, or parts of development, within the boundary of Wales. In terms of how this will effect notification and consultation requirements, we will set out best practice in guidance which will suggest developers notify all relevant LPAs and communities affected by a proposal, including those in England.

Fees

We agree LPAs should have the ability to charge fees for undertaking work mandated by legislation on a cost recovery basis. More detailed information regarding fees will be considered and be subject to further consultation evidence-gathering to ensure an accurate fee is provided for participation.

Mandatory pre-application advice

Although mandatory pre-application consultation will be undertaken by developers, we do not consider it appropriate to legally require developers to discuss their proposals with relevant LPAs. We accept LPAs have local knowledge and expertise and they will have the opportunity to set this out in the form of local impact reports. We will encourage developers to enter into discussions with LPAs as early as possible in guidance, set out as best practice.

Pre-application reports

Developers will be required to submit a pre-application consultation report to the Welsh Ministers which sets out all consultation responses, identifying which comments have been carried forward and for those which have not, justified why. This will help demonstrate how a proposed development has progressed through the pre-application consultation stage and how various stakeholders have influenced its progression.

Initial notification requirements

We acknowledge the importance of statutory consultees in the consenting process, however, during the initial stages of development where prospective applicants are required to notify the Welsh Ministers and LPAs, the scheme may not be sufficiently developed to determine what the impacts are on which bodies.

Form and content of pre-application consultation

As a minimum, a draft application and EIA (where required) must be consulted on by the applicant prior to submission of an application.

Although it may be considered onerous for developers to consult on a draft application prior to formal submission, we consider this to be an important aspect of the frontloading process, with the aim of speeding up decisions, increasing certainty in the process and leading to a greater number of consents being granted permission.

While we are proposing developers be required to maintain a website throughout the initial pre-application stage detailing progress and the draft applicant when completed, up to the point of formal submission, we are not intending to require websites to be maintained for any longer than this. It will be for the Welsh Ministers to maintain an application website beyond this stage.

Next steps

- 3.238 We intend to progress our proposal to introduce statutory pre-application consultations requirements for developers before the submission of a WIC to help ensure local communities are well informed, engaged and have the opportunity to make a meaningful contribution towards a proposed development which has national significance within their locality.

Q18	Do you agree with our proposals to remove inquiries from the process for determining WIC and for hearings only to be held in place? If not, why not?
The consultation proposes to remove the formality normally associated with inquiries and for specific issues to be addressed by way of hearings alone in order to strengthen community involvement in the process. We will, however, reserve the ability for cross-examination at hearings where useful and necessary.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	2	1	5	10
B	Local Authorities (including National Park Authorities)	3	3	1	3	10
C	Government Agency/Other Public Sector	3	1	0	8	12
D	Professional Bodies/Interest Groups	0	1	2	6	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	1	1	3
Total all respondents		9	7	5	25	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	16	5
Overall Percentage	76%	24%

Statistical review

- 3.239 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 76% agreed with the proposal to remove inquiries from the process for determining WICs and for hearings only to be held in place.
- 3.240 All respondent groups, with the exception of Professional Bodies / Interest Groups and those in the 'Others' category were generally in favour of the proposal. The majority of respondents in the Professional Bodies / Interest Groups category disagreed with the proposal, whilst responses within the 'Others' category were mixed.

Key themes

- 3.241 The key themes in response to question 18 were as follows:
- Overall support for the proposal to remove inquiries from the process for determining WICs and for hearings only to be held in their place;
 - Inquiries were seen as lengthy and not cost effective by some respondents; and
 - Some form of cross-examination should be retained.

Overview

- 3.242 Overall, respondents supported removing inquiries from the process for determining WICs for a variety of reasons, including providing fair and inclusive participation, as well as the belief among some respondents suggest inquiries can be long and protracted, impact project programmes and cost.
- 3.243 An LPA commented inquiries can be adversarial, lengthy and may not be the best way of assessing complex technical issues. Similarly, a Government Agency / Other Public Sector respondent stated inquiries can be resource intensive and their removal and replacement by topic-based and open floor hearings is a sensible approach.
- 3.244 Furthermore, a number of respondents, predominately LPAs, were happy to support the proposal, providing provision is made for cross-examination. However, one of these LPAs also commented the process must be a forum where all concerns / issues are heard and considered.
- 3.245 Although in support of the proposal, one Business / Planning Consultant advised caution about proposals which could be taken advantage of by parties who do not wish to offer constructive contributions to the process, but only seek to frustrate and delay it.

- 3.246 One LPA disagreed with the proposal stating less significant developments must undergo an inquiry during the planning process and assuming there is no right of appeal for a WIC (except for Judicial Review) it would only be fair for WICs to be tested in a similar manner.
- 3.247 Furthermore, a Professional Body / Interest Group disagreed with removing inquiries in their entirety, although suggested they could be retained on a topic basis to give the flexibility of allowing them by exception for contentious issues.
- 3.248 Another Professional Body / Interest Group who neither agreed nor disagreed with the proposal stated examinations must be proportionate and inquiries offer the opportunity for cross examination, this can sometimes be best way to examine evidence. 'Open-floor' discussions will be completely inadequate.
- 3.249 Two respondents submitted responses which were not relevant to the question.

Q18 Welsh Government Response

Cross-examination

Although the consultation paper proposes to remove inquiries in favour of open-floor and topic-based hearings, which is intended to remove the formality usually associated with inquiries, we recognise the importance of having the ability to cross-examine parties in certain circumstances. Therefore, we intend to allow Inspectors the ability to allow cross-examination at hearings, where considered necessary and useful. We will give further consideration as to whether this should occur by way of hearing or inquiry.

Mixed-mode examination

Although we are propose the removal of inquiries from the examination process, we agree with using certain methods of examination on a topic-based approach for consideration of certain matters. Therefore, we are proposing an examination procedure similar to DNS, whereby examinations can be undertaken by one of, or a mixture of written representations, open floor hearing or topic-based hearing. This will help ensure examinations are proportionate to each application.

Next steps

- 3.250 We intend to progress our proposals to advocate a topic-based and open floor hearing approach, together with written representations as potential examination methods. Inspectors will use their discretion as to which examination method, or mixture of methods, would be most appropriate on a case-by-case basis and will also have to ability to cross-examine at hearings.

We will give further consideration as to whether cross-examination may occur as part of an inquiry in exceptional circumstances.

Q19	Do you agree with our proposals regarding variations during the determination process and post-consent variations? If not, why not? If you agree, please suggest ways of fast-tracking those variations.
The consultation proposes to allow a window for variations to be made to a proposed development application during the determination process, similar to the DNS process. It also proposes variations following the issuance of a consent to take account of efficiencies in terms of design and improved mitigation of impacts, where these are discovered post-consent, but before construction.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	3	1	4	10
B	Local Authorities (including National Park Authorities)	2	4	0	4	10
C	Government Agency/Other Public Sector	2	1	0	9	12
D	Professional Bodies/Interest Groups	0	1	0	8	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	0	0	2	1	3
Total all respondents		6	9	3	28	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	3
Overall Percentage	83%	17%

Statistical review

- 3.251 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 83% agreed with the proposal relating to variations to be made during the determination period and post-consent.
- 3.252 LPAs, Government Agency / Other Public Sector and Professional Bodies / Interest Group respondents all agreed with the proposal with no objections raised. Responses from those in the Business / Planning Consultant category were mixed, although the majority agreed with the proposal and there were no recorded responses from the Voluntary Sector. Respondents from the 'Others' category disagreed with the proposal.

Key themes

- 3.253 The key themes in response to question 19 were as follows:
- Overall support for the proposal regarding variations during the determination process and post-consent variations;
 - More detail and consideration is required regarding what is considered to be a 'minor' variation; and
 - Fast-tracking non-contentious variations should be considered.

Overview

- 3.254 LPAs were supportive of the proposal, although specific comments were raised as part of the consultation. For example, a number of LPAs stated more detail is required on what would constitute a 'minor' variation and who would be responsible for making this decision. Similarly, another LPA suggested variations which require changes to an EIA or the need for an additional Habitat Regulations Assessment should not be considered minor. The respondent also queried whether the 'Rochdale Envelope principle' would apply.
- 3.255 One LPA who was in agreement with the proposal also suggested if a proposed amendment does not raise any material objections from LPA or statutory consultees, then there is an opportunity for these amendments to be fast-tracked. This point was also raised by another LPA who felt this could remove often lengthy and unnecessary consultations which may not be in everyone's best interests and also a Business / Planning Consultant who raised similar comments.
- 3.256 Business / Planning Consultant respondents were also in favour of the proposal generally, with two commenting although they agree, the approach taken by the DCO process for variations during the application process should be adopted and statutory timetables should be introduced for variations post-

consent, to ensure speedier decisions on aspects of developments which are considered to be minor in nature. The respondents also suggested it may be possible for the deemed consent approach to work, which will allow a more proportionate variation procedure. One Business / Planning Consultant suggested variations following consent should be made by application to LPAs rather than the Welsh Ministers, with limited consultation with key stakeholders to ensure a speedy process.

- 3.257 Alternatively, another Business / Planning Consultant felt the DCO regime fails as there is uncertainty surrounding post-consent changes considered material to a project and stated it is essential a proportionate procedure, with a clear process and timescale, is introduced as part of the regime to ensure any post-consent amendments are brought forward where required.
- 3.258 Another Business / Planning Consultant who was also in agreement with the proposal stressed the importance of ensuring the Welsh Ministers are the determining authority for post-consent amendments.
- 3.259 A Professional Body / Interest Group responded stating variations in the mainstream CPO regime are easier than in the DCO regime and should be considered as a possible solution. For post-consent variations, the respondent commented there must be a mechanism for ensuring the process followed is proportionate to the issues raised.
- 3.260 Although neither agreeing nor disagreeing with the proposal, a Business / Planning Consultant stated variations affecting matters and conditions specified in the core consent should require the approval of the Welsh Ministers, but variations affecting matters and conditions specified in secondary consents should require the approval of the relevant enforcing authority.
- 3.261 Of those disagreeing with the proposal, a Business / Planning Consultant stated potential amendments should consider more than those which are minor in nature, particularly where such an amendment can reduce environmental and other impacts of developments.
- 3.262 A Government Agency / Other Public Sector respondent neither agreed or disagreed with the proposal, however, commented consideration must be given to the appropriate authority for post-consent work in the marine environment, particularly for developments in the intertidal zone to avoid any situation in which two authorities (onshore and offshore) are required to undertake the same work (i.e. determine whether a variation is considered material or not).

Q19 Welsh Government Response

Definitions of 'minor amendments'

Non-material and material amendments are not defined in legislation because there are a number of factors which must be considered and will vary on a case-by-case basis. These include the context of the overall scheme, the amendment(s) being sought to the existing WIC and the specific circumstances of the site and surrounding area. We intend to continue this approach and it will be the Welsh Ministers' discretion in determining whether a proposed amendment is considered non-material or material. While this is the case, it is the intention to further clarify what may be non or minor material in guidance.

Fast-tracking variations

We acknowledge the frustration caused in determining amendments which are considered to be non-material or minor material in nature, and the absence of statutory timeframes for determination result in applicants waiting long periods for a decision. It is our intention to remedy this by introducing statutory timeframes, for both non-material and material amendments, and to produce a fast-track approach for those which are non-material or minor in nature and which meets certain criteria. Proposals for an expedited process for non-material amendments will be included as part of a detailed consultation which sets out how the proposed WIC process will operate in practice.

We acknowledge the benefits of various existing regimes in varying or amending a development proposal and we will consider these in developing more detailed proposals in relation to amending or varying a WIC.

Determining authority

As WIC projects will not produce a consent which is familiar to LPAs and other normal consenting authorities we consider it appropriate for the Welsh Ministers to be the determining authority in these instances, given they would already be considering the merits and potential impacts of a proposed development. This would provide consistency to the applicant, and would not cause time to be spent by a different consenting authority revisiting the reasoning behind an original decision.

Similarly, in terms of post-consent amendments or variations, as the Welsh Ministers would have dealt with the original consent, we consider it to be logical for them to consider and determine any variations of condition or the scheme as a whole.

Next steps

- 3.263 Given the potential size and impact a proposed development through the WIC process is likely to have, we consider it appropriate for a mechanism to be put in place which allows for amendments or variations to be made to an application both during the decision-making process, and following the granting of consent. It is our intention to continue towards this approach, with the Welsh Ministers being the determining authority and having responsibility for making decisions on whether a proposed variation is considered to be material or not.
- 3.264 It is the intention to develop a fast-track mechanism for the determination of minor changes post-consent which accord with a published criteria. A further consultation on the complete WIC process is intended to detail this aspect.

Q20	Do you agree the LPA is the relevant onshore enforcement authority and the Welsh Ministers is the relevant offshore enforcement authority? If not, why not?
The consultation proposes LPAs would be responsible for enforcing WICs which are based onshore and the Welsh Ministers would be responsible for enforcing WICs which are based offshore.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	2	2	5	10
B	Local Authorities (including National Park Authorities)	3	3	0	4	10
C	Government Agency/Other Public Sector	2	1	0	9	12
D	Professional Bodies/Interest Groups	0	1	0	8	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	1	1	0	3
Total all respondents		7	8	3	28	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	3
Overall Percentage	83%	17%

Statistical review

- 3.265 The majority of respondents did not answer the question, however, of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 83% agreed with the proposal for LPAs to be the relevant enforcing authority onshore and for the Welsh Ministers to be the relevant enforcing authority offshore.
- 3.266 LPAs, Government Agency / Other Public Sector and Professional Bodies / Interest Group respondents all agreed with the proposal with no objections raised. Responses from those in the Business / Planning Consultant and 'Others' categories were mixed, although the majority agreed with the proposal and there were no recorded responses from the Voluntary Sector.

Key themes

- 3.267 The key themes in response to question 20 were as follows:
- Overall support for the proposal regarding the relevant authorities for onshore and offshore enforcement;
 - More information is required in relation to the enforcement process; and
 - Certainty is required for onshore and offshore jurisdictions.

Overview

- 3.268 One LPA stated more detailed information is required relating to how the enforcement process would occur in practice, while another commented it was unclear whether there would be a separate enforcement procedures in place for the WIC process in the same way as NSIPs have and suggested there should be a single enforcement process for WICs.
- 3.269 A Professional Body / Interest Group agreed with the proposal, but highlighted an overlap between the Town and Country Planning regime and the marine licence regime in the intertidal area, which must be addressed. The respondent also queried how secondary consents which would not normally be consented by LPAs would be enforced and suggested the normal consenting authority would be better placed to undertake any necessary enforcement action. This was also raised by a Business / Planning Consultant respondent who also commented further consultation is required on this issue to provide greater detail on the enforcement process.
- 3.270 Similarly, a Government Agency / Other Public Sector respondent stated there must be a clear legislative outline of each authority's jurisdiction, considering the location and cause of the impact and those projects in the intertidal area.

- 3.271 A number of respondents, including LPAs and those from the Business / Planning Consultant category were also in support of the proposal, but stated for both onshore and offshore enforcement, consideration must be given to funding and staff resources needed to undertake this work. It was suggested this could be achieved by fees or entering planning performance agreements.
- 3.272 Of those who disagreed with the proposal, one private individual did not agree with the Welsh Ministers being the relevant authority for offshore enforcement, as they are not confident the Welsh Ministers will take the necessary action, even where clear evidence of a breach or failure to comply is presented to them.
- 3.273 Furthermore, a Business / Planning Consultant commented if infrastructure developments are consented by the Welsh Ministers, it would be illogical to expect LPAs to undertake enforcement action for onshore developments and it should be the Welsh Ministers' responsibility.
- 3.274 Another Business / Planning Consultant did not respond to the consultation question, although commented further consultation on enforcement is required to answer a number of questions, including those relating to the appropriate enforcing authority and fees.

Q20 Welsh Government Response

Enforcement processes and procedures

As the proposed unified consenting regime will encompass both onshore and offshore developments, we are required to have separate enforcement systems. As we are proposing an WIC granted consent may also include a deemed marine licence, these licences are deemed under the Marine and Coastal Access Act 2009 and the enforcement provisions included within this Act will therefore apply, which confer this authority on the Welsh Ministers.

Consideration has been given to providing a distinct enforcement process for WICs and we agree with this suggestion. We will prescribe legislation which sets out specific enforcement provisions for WICs, and consider their impact on optional WICs. Where the consultation proposes different authorities undertake enforcement action for onshore and offshore areas, we understand the need for clear jurisdiction boundaries to be provided for clarity and certainty. This will be prescribed in legislation and if necessary, further information provided in guidance.

Relevant enforcing authority

Where a secondary consent is granted as part of a WIC, we consider the usual enforcing authority for the secondary consent would be best placed to undertake any necessary enforcement action. This is linked to research we will undertake as to whether such secondary consents should either be

deemed or dis-applied.

Fees

We do not intend to charge specific fees for any enforcement action undertaken by the appropriate authority. Any damages or costs relating to enforcement would be recoverable through the courts.

Next steps

- 3.275 It is our intention to designate the LPA as the main onshore enforcement authority, with the Welsh Ministers as the relevant authority offshore. Following the comments received, we consider it necessary to develop specific enforcement provisions for WIPs. It is intended to develop such provisions alongside LPAs and other normal consenting authorities.

Q21	Do you agree with our proposals regarding the compulsory acquisition of land? If not, why not?
Compulsory acquisition powers are an important tool to assemble the land required to deliver modern and connected infrastructure. The consultation proposes to include in the consenting process for a WIC the ability for developers to apply for powers to compulsory acquire land or rights in land, the extinguishment or interference with public rights and temporary possession of land. For WIPs these powers will be essential where it is impracticable to acquire all of the land or rights needed for a scheme by agreement, or where statutory undertakers' equipment would be affected.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Did not answer	Total
A	Businesses / Planning Consultants	3	2	0	5	10
B	Local Authorities (including National Park Authorities)	6	0	0	4	10
C	Government Agency/Other Public Sector	2	1	0	9	12
D	Professional Bodies/Interest Groups	0	2	0	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	0	0	2	1	3
Total all respondents		11	5	2	28	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	16	2
Overall Percentage	89%	11%

Statistical review

- 3.276 The majority of respondents agreed with the proposal to include in a WIC the power to compulsory acquire land or rights in land, the extinguishment or interference with public rights and temporary possession of land. Of those, one Businesses/Planning Consultants, and two Professional Bodies/Interest Group respondents agreed subject to comments being made.
- 3.277 Although two Professional Body/Interest Group respondents were in general agreement with our proposals, they disagreed with our approach regarding being heard in writing.

Key themes

3.278 The key themes in response to question 21 were as follows:

- The WIC compulsory acquisition proposals should be aligned with classic and correct compulsory acquisition principles; and
- Compulsory acquisition powers are crucial for an effective major infrastructure project consent.

Overview

- 3.279 The majority of respondents agreed and supported our proposal to include in a WIC the power to compulsory acquire land or rights in land. A LPA respondent considered the requirement for the Welsh Ministers to only authorise the compulsory acquisition of land where they are satisfied there is a compelling case in the public interest was a reasonable safeguard providing the assessment of public interest was robust and transparent.
- 3.280 A respondent from the Voluntary Sector, who agreed with the proposal, considered the protections afforded to statutory undertakers' land by section 127 of the Planning Act 2008 should be replicated to ensure land owned by statutory undertakers for the purpose of carrying on their undertaking is safeguarded.
- 3.281 One LPA respondent, who agreed with the proposal, stated as the DNS consenting regime does not provide the power to compulsory acquire land, its effectiveness is limited especially in relation to larger linear projects. Furthermore, the proposal should speed-up the decision making process and lead to WIPs being completed within a quicker timescale. This will be positive for both developers and investors in infrastructure and have a positive effect on communities where there is a need for these types of development.
- 3.282 Although one Businesses/Planning Consultants respondent agreed with the proposal, they commented compulsory acquisition should be progressed when proposed private acquisition has been exhausted.
- 3.283 Concern was expressed by a Businesses/Planning Consultants respondent who sought reassurance any application for compulsory land acquisition

under a WIC should have full regard to existing nationally critical infrastructure. Also, such applications should not be allowed to constrain any potential future developments. Infrastructure developments considered under WIC criteria and thresholds should not be considered a priority by Welsh Ministers compared to other existing or potential critical infrastructure.

- 3.284 A response by a Professional Body/Interest Group, although in agreement with the proposal, stated where compulsory acquisition is allowed the threshold for consent to use the proposed power should be very high. Furthermore, it should be recognised many of the companies using the proposed power are likely to be profit-making companies and they should prove why the infrastructure is needed and why it has to locate there (including an assessment of the alternative options and what mitigation measures have been put into place, including accommodation works).
- 3.285 A respondent from the 'Others' category disagreed with the proposal because it would not take other viewpoints into account.
- 3.286 A Businesses/Planning Consultants respondent did not respond to the consultation question, although commented it would be helpful for guidance to address the definition of what constitutes a successful objection, as this will need clarifying.

Q21 Welsh Government Response

Exhaustion of private acquisition

Stakeholders have stated the power to compulsory acquire land and rights over/to land is an essential mechanism for progressing major infrastructure projects where negotiations with landowners have stalled or are protracted. They have informed us the threat of the use of compulsory acquisition powers is often enough to progress negotiations. It is our view the power to compulsory acquire land is an essential component of any potential consenting regime for WIPs.

Statutory undertakers

Protections will be available through the WIC regime to ensure land owned by a statutory undertaker for the purpose of carrying on their undertaking is safeguarded from compulsory acquisition through a WIC.

Impacts

It is our intention to ensure the impact of any potential acquisition of land on existing rights over or structures on land is taken into account and safeguarded through the WIC regime.

Each application for WIC will be determined on its own merits and considered equally when compared with other proposed or existing development.

Cross-examination

We propose to allow parties to formally request for cross examination to take place in hearings. It is proposed all parties to a request for the compulsory acquisition of land included in a WIC will be sought to give their representations on the proposal.

Depending of the nature of the issues associated with a proposal, the avenue for allowing the right to be heard will exist through topic-specific hearings.

Affected landowners

Affected landowners would be consulted on the proposals to compulsory acquire land or rights over land at the pre-application stage, the application stage, and asked either to submit written representations or attend a hearing to give their views to an inspector.

Next steps

- 3.287 It is the intention is to take forward the proposals set out in the consultation paper and include in the WIC regime the power for developers to compulsory acquire land or rights in land, the extinguishment or interference with public rights and temporary possession of land.

Q22	Do you have any other comments to make on both Parts 1 and 2 of this consultation?
The consultation provided an opportunity for respondents to make any other comments relating to Parts 1 and 2 they considered to be relevant.	

Environmental considerations

- 3.288 An LPA expressed concern there was little mention in the consultation of the requirement to carry out a Habitat Regulations Assessment, where necessary, and the Welsh Government should consider making this more explicit.
- 3.289 It was suggested by a Professional Body / Interest Group a new consenting process must be able to refuse a project on the grounds of the environmental damage it could do, in accordance with the nature directives which underpin sustainable development.
- 3.290 Both a Professional Body / Interest Group and a Business / Planning Consultant commented on the lack of detail relating to the EIA process (screening and scoping) and the Welsh Government should consider whether it is appropriate to use one or more of the existing EIA Regulations in force or draft and adopt new EIA Regulations specifically for WIPs.

Fees

- 3.291 An LPA commented participation by LPAs in the WIP process, along with agreeing and discharging conditions and enforcement, will have cost implications and will need to be recovered by an appropriate fee regime.
- 3.292 Two LPAs and a Business / Planning Consultant stressed serious concerns over proposals to provide LPAs with a set fee to cover the costs of producing an LIR, due to the varying nature and scale of potential projects, some of which will require far more resource and input.
- 3.293 Another LPA commented fees for discharging of conditions should be proportionate to the level of resources required by LPAs to undertake this work and should not be set fees.
- 3.294 A Government Agency supported the principle of full cost recovery, but did not agree statutory consultees should enter into Planning Performance Agreements as it was suggested this is not the most effective way to recover costs.
- 3.295 A Professional Body / Interest Group and a Business / Planning Consultant stated the Welsh Government should explore fee structures in other jurisdictions to ensure projects in Wales are not at a competitive disadvantage.
- 3.296 A Business / Planning Consultant responded, stating any fee structure should be proportionate, fair and sustainable.

However, the respondent commented a cautious approach should be taken in adopting fees in line with the Scottish Government as this would represent an increase of over 1000%.

Further information and guidance

- 3.297 An LPA suggested there is a need for clear guidance in respect of the scale of a Planning Performance Agreement and must provide LPAs with sufficient resource to enable them to engage meaningfully in the process without having to compromise other aspects of its ongoing, day to day work.
- 3.298 A Government Agency / Other Public Sector respondent stated it is essential there is full guidance on the operation of the WIC regime to ensure a smooth transition.
- 3.299 Both a Professional Body / Interest Group stated how the consultation did not reference potential arrangements for cross-boundary (i.e. Wales / England) projects and how these may be considered within a future WIC process.
- 3.300 A respondent from the Voluntary Sector sought clarity on which secondary consents may be dis-applied as part of the WIC process.

General comments

- 3.301 A Government Agency / Other Public Sector respondent commented, stating the well being of future generations in Wales will depend on having infrastructure which is both safe and secure.
- 3.302 A Professional Body / Interest Group stated their concerns a devolved approach to infrastructure consenting may lead to an imbalance in infrastructure delivery and therefore, must be proportionate, fit for purpose and comparable with the existing process in other parts of the UK so as not to disadvantage projects.
- 3.303 A Professional Body / Interest Group queried where section 42 of the Wales Act 2017 only applies to grid connections included with a generation station application, or does it apply to separate grid applications which serve the same purpose.
- 3.304 A Business / Planning Consultant queried whether projects submitted under the Electricity Act 1989 and the Planning Act 2008 before 1 April 2019 be subject to transitional provisions and determined by the UK Government?
- 3.305 A Business / Planning Consultant stated the consultation does not include references to the repowering of existing wind farms (onshore and offshore) and further clarity on this is required.

Legislation / Policy

- 3.306 A Business / Planning Consultant stated the long term Welsh Infrastructure Consent (WIC) regime should provide for possible further devolution, in particular of consenting responsibility for overhead lines of 132KV and lower voltages.
- 3.307 The respondent also commented there must be policy consistency as there may be situations where some projects will be subject to a WIC and decisions will be taken based on Welsh Government policy documents such as the NDF and PPW, while other similar projects for different end purposes will be subject to UK Government policy which may differ significantly from Welsh policy. This inconsistency may cause misunderstandings.
- 3.308 Another Business / Planning Consultant echoed these comments and did not consider the Welsh Ministers' authority to make consenting decisions on overhead lines should be restricted only to lines up to and including 132KV.

National register for WICs

- 3.309 A respondent from the Professional Body / Interest Group category suggested an online national register of all WIC proposals should be maintained by the Welsh Government to help all parties engage with a WIC proposal from the earliest opportunity. This was also suggested from a respondent in the Business / Planning Consultant category.

Planning obligations

- 3.310 A Professional Body / Interest Group respondent commented the consultation lacked any mention of how section 106 agreements will be dealt with procedurally at different stages of the process.

Reducing complexity

- 3.311 It was suggested by an LPA the Welsh Government seems to have over-complicated the proposed procedures by having compulsory and optional WIPs, having some decisions made by the Welsh Ministers and other delegated to Inspectors and having some WICs as statutory instruments and others as standard consents. This appears overly complex and undermines the objective of having a clear, transparent process and a one-stop shop which will give developers the certainty and confidence needed to invest in Wales.

'Rochdale Envelope' principle

- 3.312 A Business / Planning Consultant commented it is essential the WIP regime allows for a design / Rochdale Envelope approach and does not seek to compel applicants to make fully detailed applications at the outset for such major projects, which is unrealistic and may deter investment.

- 3.313 Another Business / Planning Consultant respondent also echoed these comments by suggesting the inclusion of the Rochdale Envelope principle should be considered.

Role of Inspectors

- 3.314 Clarification was sought by a number of respondents regarding the role of Inspectors as the consultation paper was not clear whether references to the Welsh Ministers (i.e. in making an initial assessment of the principle issues) meant Inspectors or not.

Role of LPAs

- 3.315 There was concern expressed by a Government Agency / Other Public Sector respondent on the role of LPAs is being downplayed in the proposals. They commented as the host authority and enforcing authority, it is important LPAs roles are significant so their local knowledge and legitimacy in the eyes of local people is fully taken into account, particularly in relation to consents which would otherwise be determined by the LPA. This extends to the resourcing and costs of participation by LPAs, and the approach to reimbursing the costs of LIRs.

Statutory Consultees

- 3.316 A Government Agency / Other Public Sector respondent requested consideration of a review of statutory consultees, particularly in relation to public health impacts, which must be taken into account as part of the Well-being and Future Generations Act 2015.
- 3.317 Similarly, another respondent from this category stated resource implications on statutory consultees needs to be considered fully and for there to be consistency in wording of any new or changes to legislation, policy or guidance when referring to statutory consultees or specialist consultees.
- 3.318 A respondent from the Voluntary Sector requested they be a statutory consultee in relation to any powers included in the WIC process which affect a canal or waterway. Similarly, a Professional Body / Interest Group stressed there is a need to ensure the independence and expertise of consenting bodies and statutory consultees are protected as part of the WIC process.

Time limits for consents

- 3.319 A Professional Body / Interest Group felt 'time pressures' (i.e. introducing structured timetables for delivery to improve certainty) should not be imposed on some decisions, particularly where the environmental impact of novel technologies is unproven and modelling assumptions are not easily agreed. The quality of decision-making must not be compromised by time pressure.
- 3.320 Similarly, the issue of time limits was also raised by a Government Agency / Other Public Sector respondent who stated a fixed determination timetable

could risk applications being turned down if there is insufficient time to address significant impacts adequately or not being determined at all if a time period ends.

Q22 Welsh Government Response

Environmental considerations

We recognise the importance of environmental considerations in developing a new consenting regime for Wales, particularly given the size, scale and potential impacts of developments which would be captured under this regime. Environmental considerations, including the relationship with HRA and EIA will be developed in greater detail in future consultation relating to the proposed consenting regime.

Fees

We understand the financial and resource constraints LPAs and other stakeholders currently face. Any consenting regime will need to offer true cost recovery for all key parties where they are required to undertake certain functions which have impacts on finances and resources and we will consult stakeholders when more detailed fee levels have been developed. Furthermore, Planning Performance Agreements will be optional and not compulsory as part of the proposed consenting regime. We will continue to work with stakeholders to develop a fair and evidence-based way of charging for LIRs, while retaining some certainty for the fee payer.

Further information and guidance

As the process will be an entirely new and bespoke consenting regime for Wales, we will also seek to introduce guidance alongside legislation to assist all parties in participating in the process.

General comments

The relevant transitional provisions relating to onshore generating stations are contained in Paragraph 8 of Schedule 7 to the Wales Act 2017. Section 42 of the Wales Act devolves 132KV overhead electric lines which are associated with a devolved generating stations. There is no requirement for the application for the overhead electric line to be linked or form part of a specific application.

The consultation relates to new development or alterations to existing development. Where the repowering of an existing installation constitutes development, it is for the applicant to demonstrate whether this constitutes new development or an alteration to required an application for DNS.

Legislation / Policy

The issue of devolving further powers to Wales for additional powers relating to overhead electric lines is a UK Government consideration and currently, the Wales Act 2017 only provides competence of up to 132KV for overhead electric lines.

National register for WICs

Similar to NSIPs, it is our intention to publicise each WIC proposal (including all documentation, plans, assessments etc.) on the Welsh Government website to help ensure a transparent process.

Planning obligations

How planning obligations interact with the WIC process will be addressed as part of a future consultation which sets out the detail of the WIC process.

Reducing complexity

To benefit all users and to ensure applications can be consented quicker and with greater certainty of outcomes, a flexibility of approach is required.

Rochdale envelope principle

We agree, due to the nature of the proposed consenting regime, a different approach to the planning regime is required. A Rochdale envelope principle approach and other methods of flexibility are intended to be introduced as part of the process.

Role of Inspectors

We envisage the proposed consenting regime to operate in a similar manner to DNS in such a way which enables the Welsh Ministers to appoint an appointed person (i.e. an Inspector) on their behalf. The Welsh Ministers will, however, be granted the necessary powers to undertake functions carried out by appointed persons themselves and will be the determining authority, rather than an Inspector.

Role of LPAs

We understand the significance and importance of LPAs in the process for infrastructure consenting and will ensure their local knowledge and expertise is utilised throughout the various stages of the process. As discussed in previous sections, LPAs will be consulted on proposals which fall within their local authority area and will also be required to present their knowledge and expertise in the form of an LIR. We will also encourage developers to interact with LPAs at the earliest possible stage by engaging in pre-application conversations. We are continuing

discussions with LPAs as the process develops to ensure they are fairly reimbursed for their statutory role.

Statutory consultees

Statutory consultees will form an integral part of the consenting process for their knowledge and expertise in certain areas, much in the same manner as LPAs. More detailed information relating to the role of statutory consultees will be subject to further, more detailed consultation.

Time limits for consents

Given the potential size and scale of developments coming through the consenting process, we acknowledge the concerns raised by respondents regarding time limits. The purpose of introducing time limits is to offer all parties involved in the consent process with certainty and clarity and we have sought to strike a balance between those projects which are of a smaller scale, less controversial and have been subject to little or no objection and those which, for example, could potentially have environmental impacts and be subject to an EIA by proposing different time limits.

Q23	Do you agree with our criteria for delegating non-Ministerial compulsory purchase orders (CPOs) for decision by an Inspector? If not, why not?
<p>Section 14D of the Acquisition of Land Act 1981 ("the 1981 Act") enables the Welsh Ministers to appoint, on their behalf, an Inspector to make the decision on whether or not a non-Ministerial CPO, i.e. where the acquiring authority is not one of the Welsh Ministers and section 13A of the 1981 Act applies, should be confirmed.</p> <p>The consultation proposes to delegate decisions by an Inspector in certain, but not all, circumstances. To assist the consideration of whether or not to delegate a decision by an Inspector on a non-Ministerial CPO, criteria have been suggested.</p>	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	2	0	6	10
B	Local Authorities (including National Park Authorities)	6	0	0	4	10
C	Government Agency/Other Public Sector	0	1	1	10	12
D	Professional Bodies/Interest Groups	2	0	0	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	0	2	0	3
Total all respondents		11	3	3	29	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	14	3
Overall Percentage	82%	18%

Statistical review

- 3.321 The majority of respondents agreed with the proposed criteria for delegating non-Ministerial CPOs for decision by an Inspector without comment.
- 3.322 Disagreement to the proposal came from two Other respondents and one Government Agency / Other Public Sector respondent.

Key themes

- 3.323 The key themes in response to question 23 were as follows:
- The proposed amendments seem a pragmatic and equitable way to expedite and manage the process; and
 - The proposal appears to strike the right balance between efficiency and fairness and have the necessary ability for matters to be recovered if something sufficiently new or important warrants it.

Overview

- 3.324 The majority of respondents agreed and supported our proposed criteria for delegating non-Ministerial CPOs for decision by an Inspector. One LPA respondent considered the assessment of the CPOs made during the previous 10 years seemed a sound basis for the proposed amendments and the criteria appeared to provide an appropriate checklist against which to determine such orders.
- 3.325 A Businesses/Planning Consultants respondent, who agreed with the proposal, stated much of the proposals in the consultation were intended to give the political decision a greater degree of primacy in the process of consenting major infrastructure works, and they were concerned to see a strong, broad and already properly determined decision being frustrated by an Inspector as a separate process.
- 3.326 When disagreeing with the proposed criteria, an Other respondent stated while they could understand the idea they could not see parties agreeing in many cases as to whether the potential CPO would satisfy the guidelines or not.
- 3.327 A Government Agency/Other Public Sector respondent who disagreed with the proposed criteria outlined they did not like delegation from Ministerial level on important matters. Similarly, a respondent from a Professional Body/Interest Group, when disagreeing, stated it is imperative the Minister is a part of the decision-making process as they need to carry the political accountability for the consent.
- 3.328 One comment was received which was relevant to the question.

Q23 Welsh Government Response

The majority of respondents agreed with the proposed criteria for delegating non-Ministerial CPOs for decision by an Inspector.

In relation to the comment on the consenting major infrastructure works and such decisions being frustrated by an Inspector as a separate process, the proposed criteria outlined in the consultation are not related to the consenting of WIPs under the proposed WIC regime. The proposed criteria relates solely to the procedure for the compulsory purchase of land through a CPO and not a WIC. As such, the comment has no direct relevance to the consultation question asked.

In terms of parties agreeing as to whether a potential CPO would satisfy the criteria. The power under section 14D of the 1981 Act to delegate the confirmation decision to an Inspector on a non-ministerial CPO is one to be exercised by the Welsh Ministers. The proposed criteria outlined in the consultation will be used by the Welsh Ministers to inform their decision on whether or not to delegate a confirmation decision on a non-ministerial CPO to an Inspector. As such, there will be no consultation undertaken by the Welsh Ministers with the parties to a CPO when considering the delegation criteria for whether or not to delegate a decision by an Inspector on a non-Ministerial CPO.

In relation to the comments against delegation from Ministerial level on important matters, the principal of delegating confirmation decisions to Inspectors on non-ministerial CPOs was established by section 14D of the 1981 Act. As such, this was not subject to the consultation. Under section 14D of the 1981 Act the Welsh Ministers have the power to recover confirmation decisions from Inspectors if they choose to do so.

Next steps

3.329 The intention is to take forward and include in the revised Welsh Government Guidance on Compulsory Purchase the proposed criteria for delegating non-Ministerial CPOs for decision by an Inspector in relation to confirmation of:

- CPOs made under the Highways Act 1980;
- CPOs made under the Housing Act 1985;
- CPOs made under the Planning (Listed Building and Conservation Area) Act 1990;
- CPOs made under the Town and Country Planning Act 1990.

Q24	Do you agree with the intention to amend, via primary legislation, section 5(4) of the Acquisition of Land Act 1981 to broaden the power to award costs to parties in relation to compulsory purchase orders (CPOs) being made to facilitate development and other land uses, or for highway purposes?
<p>For public inquiries into the compulsory purchase of land, the current position is successful objectors to a CPO (or unsuccessful objectors where the acquiring authority has behaved unreasonably) must appear at inquiry to be awarded costs under section 5 of the Acquisition of Land Act 1981 ("the 1981 Act").</p> <p>The consultation proposes to broaden the power to award costs in Wales under section 5 of the 1981 Act where a CPO inquiry is cancelled or where a party does not appear at a CPO inquiry relating specifically to CPOs which are being made: i) to facilitate development and other planning purposes; or ii) for highway purposes.</p>	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	1	0	7	10
B	Local Authorities (including National Park Authorities)	6	0	0	4	10
C	Government Agency/Other Public Sector	1	1	0	10	12
D	Professional Bodies/Interest Groups	2	0	0	7	9
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	1	1	1	0	3
Total all respondents		12	3	1	30	46

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	1
Overall Percentage	94%	6%

Statistical review

- 3.330 The majority of respondents agreed with the proposal to broaden the power to award costs in Wales under section 5 of the 1981 Act where a CPO inquiry is cancelled or where a party does not appear at a CPO inquiry relating to CPOs of a specific nature.
- 3.331 Two Businesses/Planning Consultants, a Government Agency/Other Public Sector, and an Other respondents agreed subject to comments.
- 3.332 One Other respondent disagreed with the proposal.

Key themes

3.333 The key themes in response to question 24 were as follows:

- The proposed changes will bring about a fairer and more equitable process/system;
- The proposal seems reasonable and balanced, and responds to practical experience of the current regime; and
- The proposal demonstrates an understanding of the impacts on the individuals affected.

Overview

- 3.334 All but one respondent agreed and supported the proposal. A respondent from the Voluntary Sector category, in agreeing with the proposal, commented it would be proportionate to amend the legislation in order to allow for an award of costs to be made without the requirement to attend an inquiry.
- 3.335 A LPA respondent, in agreeing with the proposal, stated combining the proposals in question 23 and 24 seemed a pragmatic way to expedite and manage the process.
- 3.336 A Professional Body / Interest Group respondent, in agreeing with the proposal, outlined everyone affected by a compulsory acquisition suffers costs from day one, not just when notices are received later on. Furthermore, it is particularly true where schemes are cancelled or delayed leaving the landowner to foot what might be substantial costs.
- 3.337 One Businesses/Planning Consultants respondent, although agreeing with the proposal, commented further thought should be given to the definition of a “successful objection” in a CPO context. In that, there remains an element of an objector’s costs which relate to the making of an objection, setting out their case and perhaps attendance at a pre-inquiry meeting which cannot be claimed if they do not appear at the public inquiry.
This is because: a) their objection would have been addressed by the acquiring authority and would be subsequently withdrawn, or b) there would have been absence of unreasonable conduct by the acquiring authority.

3.338 One comment was received which was not relevant to the question.

Q24 Welsh Government Response

There was overwhelming support for the proposal to broaden the power to award costs to parties in relation to compulsory purchase orders (CPOs) where a CPO inquiry is cancelled or where a party does not appear at a CPO inquiry.

In relation to the comment on combining the compulsory purchase proposals under questions 23 and 24. We see no reason why the power to award costs to parties in relation to CPOs which are being made to:

- a) to facilitate development and other planning purposes; or
- b) for highway purposes

shouldn't also be broaden to other devolved functions such as:

- i) for listed buildings purposes under the Planning (Listed Building and Conservation Area) Act 1990; and
- ii) for housing purposes under the Housing Act 1985.

In terms of defining "successful objections", along with remaining objectors, the intention is where an objector has reached agreement with the acquiring authority to exclude their land from an order, and they subsequently withdrawn their objection, the former objector would be entitled to claim their costs for making their objection.

Next steps

3.339 The intention is to take forward in primary legislation the proposal to broaden the power to award costs in Wales under section 5 of the 1981 Act where a CPO inquiry is cancelled or where a party does not appear at a CPO inquiry. We will provide guidance on the definition of "successful objector" which will include "remaining objectors" (as defined by section 13(A)(1) of the Acquisition of Land Act 1981) but also objectors who withdraw their objections after succeeding in getting the acquiring authority to address their objections in an acceptable way.

3.340 In response to a view expressed to the consultation, we will extend the types of CPOs which the broadened power to award costs will apply to in line with the types of CPOs outlined in the proposal under question 23 of this consultation.

3.341 We propose, where a CPO inquiry is cancelled or where a party does not appear at a CPO inquiry, the power to award costs will apply to the follow types of CPOs which are related to non-reserved matters under the Government of Wales Act 2006:

- to facilitate development and other planning purposes under the Town and Country Planning Act 1990;
- for highway purposes under the Highways Act 1980;
- for listed buildings purposes under the Planning (Listed Building and Conservation Area) Act 1990; and
- for housing purposes under the Housing Act 1985.

ANNEX A – LIST OF RESPONDENTS BY CATEGORY

Businesses / Planning Consultants		LPA	
008	EnergyMyWay Ltd	002	Cheshire West and Chester Council
018	NextEnergy Capital	003	Pembrokeshire County Council
033	RWE Energy	004	Caerphilly County Borough Council
036	Innogy Renewables UK Ltd	005	Gwynedd Council
037	Port of Milford Haven	010	Anglesey County Council
038	NDF Energy	012	Neath Port Talbot County Borough Council
039	Valero	014	Cardiff Council
041	Coriolis Energy Ltd	022	The Vale of Glamorgan County Council
043	Vatenfall Wind Power Ltd	023	Newport City Council
046	Geldards	029	Carmarthenshire County Council
Government Agency / Other Public Sector		Professional Bodies / Interest Groups	
009	Neath Police	019	National Infrastructure Planning Association
011	Public Health Wales	024	Radioactive Waste Management
013	SP Energy Networks	027	Mineral Products Association
015	Mochdre with Penstrowed Community Council	028	Royal Society for the Protection of Birds
016	Marine Management Organisation	030	World Wide Fund for Nature
017	National Grid	031	Royal Town Planning Institute
021	The Health and Safety Executive	034	Dwr Cymru Welsh Water
026	Natural Resources Wales	040	Compulsory Purchase Association
032	Maesteg Town Council	044	Welsh Ports Group
035	Joint Nature Conservation Committee	Other	
042	Snowdonia Enterprise Zone Advisory Board	001	Private individual
045	Countryside Landowners Association	006	Private individual
Voluntary sector		007	Private individual
020	The Woodland Trust		
025	The Canal and River Trust		

For data protection purposes the name and address details for those respondents who did not wish to be identified have been removed from the above index and from the published consultation responses.