EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE (WALES) ACT 2024 (CONSEQUENTIAL AMENDMENTS) ORDER 2025

2025 No.

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Wales Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Rt Hon Jo Stevens, Secretary of State at the Wales Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Huw Bryer, Deputy Director for the Constitution at the Wales Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 David Harries at the Wales Office Telephone: 07840 009179 or email: David.Harries@ukgovwales.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order is made under section 150 of the Government of Wales Act 2006 which, among other things, allows the Secretary of State to make provision in consequence of Acts of Senedd Cymru. This Order makes provision in consequence of the Infrastructure (Wales) Act 2024.

Where does the legislation extend to, and apply?

4.2 The territorial extent of the amendments made by this Order (that is, the jurisdiction(s) which the amendments form part of the law of) in each case follows the territorial extent of the provisions they amend. Article 2 and Article 4 of this Order extend to the United Kingdom. Article 3 extends to England and Wales.

4.3 Article 2 and Article 3 of this Order apply (that is, where the amendments produce a practical effect) in Wales. Article 4 applies to the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The Infrastructure (Wales) Act 2024 ("the Act") introduces a new process for the consenting of significant infrastructure projects in Wales, both on land and at sea.

5.2 The Act was passed following the Wales Act 2017 which devolved further legislative and executive responsibility to Wales for the consenting of energy generating projects, overhead electric lines, as well as ports and harbours.

5.3 The process introduced by the Act replaces existing consenting regimes for infrastructure projects that are within devolved competence in Wales. A number of consents, authorisations and licences are integrated into the process. Specifically, devolved projects that were previously consented under the following regimes will now require 'infrastructure consent' under the Act:

- Developments of National Significance made under the Town and Country Planning Act 1990;
- The Transport and Works Act 1992;
- The Electricity Act 1989;
- The Highways Act 1980; and
- The Harbours Act 1964.

5.4 The Order makes consequential amendments which are necessary as a result of the Act and which would be outside the competence of Senedd Cymru.

What was the previous policy, how is this different?

5.5 Prior to the amendments made by this Order:

- Section 3(4) of the Nuclear Installations Act 1965 provides that the appropriate national authority may direct an applicant for a nuclear site licence to serve a notice on any public authority. The appropriate authority in relation to England and Wales and Scotland is the Office for Nuclear Regulation. Furthermore, section 3(8) provides that the power in section 3(4) does not apply in relation to an application in respect of a site for a nuclear generating station where consent under section 36 of the Electricity Act 1989 is required for the operation of the station or would be required but for an order granting development consent for the site under the Planning Act 2008. As set out above in paragraph 5.3, devolved projects in Wales that were previously subject to the Electricity Act consent process will now require infrastructure consent under the Infrastructure (Wales) Act 2024. An amendment is therefore needed to add infrastructure consent under the Infrastructure (Wales) Act 2024 to the categories of consent to which section 3(4) of the Nuclear Installations Act 1965 does not apply.
- Section 12(2C) of the Planning (Hazardous Substances) Act 1990 has been inserted by the Infrastructure (Wales) Act 2024 and provides that on making an order granting infrastructure consent in circumstances where hazardous substances consent would be required, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction. This enables hazardous substances consent to be granted without a separate application being made. Before giving directions under sections 12(1) to (2B) (other circumstances where deemed hazardous substances consent may be granted), the person granting the direction must consult the Health and Safety Executive. An amendment is needed to ensure that the Health and Safety Executive must be consulted before a direction is made under section 12(2C).
- Section 130 of the Finance Act 2013, which relates to the Annual Tax on Enveloped Dwellings (ATED), makes provision in relation to the conversion of a dwelling for non-residential use. The building or part of a building will be regarded as being suitable for use as a dwelling until planning permission or

development consent required for the alterations has been granted. An amendment is needed to ensure that infrastructure consent under the Infrastructure (Wales) Act 2024 is also captured by this provision. ATED extends and applies to the UK, and the amendments need to extend to Scotland and Northern Ireland, for example to cover the tax affairs of a person resident in Scotland with property in Wales.

6. Legislative and Legal Context

How has the law changed?

6.1 The effect of article 2 of this Order is to include infrastructure consent under the Infrastructure (Wales) Act 2024 ("the Act") in the categories of consent to which section 3(4) of the Nuclear Installations Act 1965 does not apply.

6.2 The effect of article 3 of this Order is to create a requirement to consult the Health and Safety Executive before issuing a direction under section 12(2C) of the Planning (Hazardous Substances) Act 1990.

6.3 The effect of article 4 of this Order is to amend the ATED legislation at section 130 of the Finance Act 2013, which makes provision in respect of the conversion of dwellings for non-residential use. Article 4 of this Order ensures that a building or part of a building will not be regarded as having become unsuitable for use as a dwelling until any infrastructure consent required under the Act for the alterations has been granted.

Why was this approach taken to change the law?

6.4 These amendments cannot be made by an Act of the Senedd because of the restrictions on the legislative competence of the Senedd: in relation to the functions of the Office for Nuclear Regulation and the Health and Safety Executive by virtue of section 108A(2)(c) of, and paragraph 197 of Schedule 7A to, the Government of Wales Act 2006; and in section 108A(2)(a) of that Act on provisions of Senedd Acts extending beyond England and Wales.

6.5 For this reason, and because the amendments are consequential on provisions in a Senedd Act, an Order under section 150 of the Government of Wales Act 2006 was identified as the most suitable vehicle for making the necessary amendments.

7. Consultation

Summary of consultation outcome and methodology

7.1 As the Order makes consequential amendments and makes no further changes to the Welsh Government's policy, a formal public consultation did not take place. Consultation was undertaken by the Welsh Government prior to the introduction of the Infrastructure (Wales) Act 2024 and during scrutiny by the Senedd.

8. Applicable Guidance

8.1 No guidance is required in relation to this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Secretary of State for Wales has made the following statement regarding Human Rights:

"In my view the provisions of the Infrastructure (Wales) Act 2024 (Consequential Amendments) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").