These notes refer to the Infrastructure (Wales) Act 2024 (asc 3)
which received Royal Assent on 3 June 2024

INFRASTRUCTURE (WALES) ACT 2024

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Infrastructure (Wales) Act 2024 ("the Act") which was passed by Senedd Cymru on 16 April 2024 and received Royal Assent on 3 June 2024. They have been prepared by the Planning Directorate of the Welsh Government in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

SUMMARY AND BACKGROUND

2. The Act reforms how infrastructure is consented in Wales. It establishes a unified infrastructure consenting process called an Infrastructure Consent for specified types of major infrastructure both onshore and offshore, called Significant Infrastructure Projects. These, in the main, comprise of energy, transport, waste, water and gas projects. The Infrastructure Consent replaces, either fully or partially, a number of existing statutory regimes for the consenting of Significant Infrastructure Projects and rationalises the number of authorisations required to construct and operate a Significant Infrastructure Project into a single consent.

3. A consultation paper, *Changes to the consenting of infrastructure: Towards establishing a bespoke infrastructure consenting process in Wales*, was published on 30 April 2018 and sets out the main principles of the Act. The consultation closed on 23 July 2018 and the Government's response to the consultation was issued in November 2018[1]. The responses to the consultation were used to inform development of the Act.

4. The Act contains 148 sections arranged in 9 Parts, and 3 Schedules.

COMMENTARY ON SECTIONS

Part 1 – Significant infrastructure project

5. Part 1 of the Act defines the meaning of Significant Infrastructure Projects and the qualifying projects which will be subject to this consenting process.

[1] Changes to the approval of infrastructure development | GOV.WALES.

Key term

Section 1 – Meaning of "significant infrastructure project"

6. Section 1 provides that development is a "Significant Infrastructure Project" if it falls within one of three categories. In order to be a Significant Infrastructure Project, projects must:
    - be a development that is specified in Part 1 of the Act as a "significant infrastructure project",
    - be specified in a direction made by the Welsh Ministers under section 22, or
    - be specified as a Significant Infrastructure Project in the National Development Framework for Wales that the Welsh Ministers are required to make under section 60(3) of the Planning and Compulsory Purchase Act 2004 (the "2004 Act").

7. At the time of the Act receiving Royal Assent, the published framework under the 2004 Act is titled "Future Wales: the National Plan 2040"[2]. This iteration of the framework does not specify projects as being significant infrastructure projects for the purposes of the Act, but replacement frameworks may do so.

8. There are three defined terms in the Act that are particularly important for the purposes of the descriptions of Significant Infrastructure Projects in Part 1. These terms are "development" (see section 133), "Wales" and "Welsh marine area" (see section 143).

Energy

Section 2 – Electricity infrastructure

9. Section 2 states the circumstances in which electricity infrastructure will be a Significant Infrastructure Project. These are:
    - the construction of a generating station (other than a wind generating station) in Wales or the Welsh marine area, where it is expected to have an installed generating capacity of between 50MW and 350MW (inclusive);
    - the alteration or extension of a generating station (other than a wind generating station) in Wales or the Welsh marine area, where its effect is to increase the installed generating capacity by at least 50MW, however, the effect of the extension must not increase the overall generating capacity beyond 350MW;
    - the construction of a wind generating station in Wales, where it is expected to have an installed generating capacity of at least 50MW;
    - the alteration or extension of a wind generating station in Wales, where its effect is to increase the installed generating capacity by at least 50MW;
    - the installation of above ground electric lines in Wales associated with the construction, extension or alteration of a generating station which is a Significant Infrastructure Project which are expected to have a nominal voltage of 132KV and a minimum length of 2km (to the extent they are in Wales).

[2] Update to Future Wales - The National Plan 2040 (gov.wales).

Section 3 – Liquified natural gas facilities

10. Section 3 states the circumstances in which development related to liquified natural gas facilities will be a Significant Infrastructure Project. These are:
    - for the construction of a facility in Wales or the Welsh marine area, the storage capacity is expected to be at least 43 million standard cubic metres or have a maximum flow rate of at least 4.5 million standard cubic metres per day;
    - for the alteration of a facility in Wales or the Welsh marine area, the existing storage capacity is expected to increase by at least 43 million standard cubic metres or by a maximum flow rate of at least 4.5 million standard cubic metres more per day.

Section 4 – Gas reception facilities

11. Section 4 states the circumstances in which development related to gas reception facilities will be a Significant Infrastructure Project. These are:
    - the construction of a gas reception facility in Wales or the Welsh marine area where the maximum flow rate of the facility is expected to exceed 4.5 million standard cubic metres per day;
    - the alteration of a gas reception facility where the maximum flow rate of the existing facility is expected to increase by at least 4.5 million standard cubic metres per day.

12. In addition, subsection (3) specifies that to qualify as a Significant Infrastructure Project, —
    - the gas reception facility must not handle gas that originates in Wales, England, or Scotland, the territorial sea adjacent to those territories or the Renewable Energy Zone. The "Renewable Energy Zone" is the area of the sea outside the territorial sea of the United Kingdom where the UK has exploitation rights for energy production under the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941);
    - the gas handled by the facility must not have arrived at the facility from England or Scotland, and must not have already been handled at another facility after its arrival in Wales or the marine area.

Section 5 – Hydraulic fracturing for oil and gas and coal gasification

13. Section 5 states the circumstances in which hydraulic fracturing for oil and gas and coal gasification will be a Significant Infrastructure Project. These are:
    - development that is the exploration, appraisal or production of coal bed methane or shale oil or gas using unconventional extraction techniques including hydraulic fracturing in Wales or the Welsh marine area, except for exploratory boreholes which do not involve the carrying out of hydraulic fracturing, and
    - development that is the gasification of coal in the strata, with the exclusion of the drilling of boreholes solely for the purpose of core sampling.

Section 6 – Open cast coal mining

14. Section 6 states that the creation of open cast coal mine or the winning and working of coal from an open cast coal mine in Wales is a Significant Infrastructure Project.

Transport

Section 7 – Highways

15. Section 7 provides that the construction of a highway is a Significant Infrastructure Project when:
    - the highway will be in Wales;
    - the Welsh Ministers will be the highway authority for the highway;
    - the highway will be a continuous length of more than 1 kilometre.

16. This section also states that the alteration of a highway is a Significant Infrastructure Project when:
    - the highway will be in Wales;
    - the Welsh Ministers will be the highway authority for the highway;
    - the alteration or improvement is likely to have a significant effect on the environment.

17. Subsections (4) to (6) specify when the construction, alteration or improvement of a highway is not a Significant Infrastructure Project.

Section 8 – Railways

18. Section 8 states that the construction of a railway is a Significant Infrastructure Project when:
    - the railway will start, end and remain in Wales,
    - the railway will be part of a network operated by an approved operator,
    - the railway will include a stretch of track that is a continuous length of more than 2 kilometres, and
    - the construction of the railway is not permitted development.

19. This section also states that the alteration of a railway is a Significant Infrastructure Project when:
    - the part of the railway to be altered is part of a railway that starts, ends and remains in Wales,
    - the railway is part of a network operated by an approved operator,
    - the alteration of the railway will include laying a stretch of track that is a continuous length of more than 2 kilometres, and
    - the construction of the railway is not permitted development.

20. Permitted development is development in relation to which planning permission is granted by article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as it has effect from time to time).

21. This section does not apply to the construction or alteration of a railway to the extent that the railway forms part of a rail freight interchange (see section 9).

Section 9 – Rail freight interchanges

22. Section 9 specifies the circumstances when the construction of a rail freight interchange is a Significant Infrastructure Project. These are:
    - the land on which the rail freight interchange is situated must:
        - be in Wales, and
        - be at least 60 hectares in area,
    - the rail freight interchange must be capable of handling:
        - consignments of goods from more than one consignor and to more than one consignee, and
        - at least four goods trains per day,
    - the rail freight interchange must be part of the railway network in Wales,
    - the rail freight interchange must include warehouses to which goods can be delivered from the railway network in Wales either directly or by means of another form of transport, and
    - the rail freight interchange must not be part of a military establishment.

23. This section also specifies the circumstances when the alteration of a rail freight interchange is a Significant Infrastructure Project. These are:
    - the land on which the rail freight interchange is situated must be in Wales;
    - the rail freight interchange must be capable of handling:
        - consignments of goods from more than one consignor and to more than one consignee, and
        - at least four goods trains per day;
    - the rail freight interchange must be part of the railway network in Wales;
    - the rail freight interchange must include warehouses to which goods can be delivered from the railway network in Wales either directly or by means of another form of transport;
    - the rail freight interchange must not be part of a military establishment;
    - the alteration must increase by at least 60 hectares the area of the land on which the rail freight interchange is situated.

Section 10 – Harbour facilities

24. Section 10 specifies the circumstances when the construction of a harbour facility is a Significant Infrastructure Project. These are:
    - the project will be wholly in Wales, the Welsh marine area or both,
    - the project will not be, or will not form part of, a reserved trust port, and
    - the project can handle the embarkation or disembarkation of at least the relevant quantity of material per year.

25. Alterations to a harbour facility will be a Significant Infrastructure Project when the effect of the alteration is expected to be to increase by at least the relevant quantity of material per year the quantity of material handled by the harbour.

26. Subsections (3) to (6) set out what "the relevant quantity" is.

Section 11 – Airports

27. Section 11 specifies the circumstances when the construction of an airport in Wales or the Welsh marine area is a Significant Infrastructure Project. These are:
    - the airport will provide air passenger transport services for at least 1 million passengers per year, or
    - the airport will provide air cargo transport services for at least 5,000 air transport movements of cargo aircraft per year.

28. The section also specifies the circumstances when the alteration of an airport in Wales or the Welsh marine area is a Significant Infrastructure Project. These are:
    - the alteration will increase by at least 1 million per year the number of passengers for whom the airport can provide air passenger transport services, or
    - the alteration will increase by at least 5,000 per year the number of air transport movements of cargo aircraft for which the airport can provide air cargo transport services.

29. The section also provides the circumstances when permitted use of an airport in Wales or the Welsh marine area is a Significant Infrastructure Project. These are:
    - an increase of at least 1 million per year in the number of passengers for whom the airport is permitted to provide air passenger transport services, or
    - an increase of at least 5,000 per year in the number of air transport movements of cargo aircraft for which the airport is permitted to provide air cargo transport services.

Water

Section 12 – Dams and reservoirs

30. Section 12 specifies the circumstances when development relating to dams and reservoirs will be a Significant Infrastructure Project. These are:
    - the construction of a dam or reservoir in Wales if the volume of water to be held back by the dam or stored in the reservoir is expected to exceed 10 million cubic metres;
    - the alteration of a dam or reservoir in Wales if the additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 10 million cubic metres.

Section 13 – Transfer of water resources

31. Section 13 specifies that the transfer of water resources is a Significant Infrastructure Project when:
    - the development is carried out by one or more water undertakers,
    - the development takes place in Wales,
    - the volume of water to be transferred as a result of the development is expected to exceed 100 million cubic metres per year, and
    - the development enables the transfer of water resources, subject to limitations.

Waste water

Section 14 – Waste water treatment plants

32. Section 14 specifies that the construction or alteration of a waste water treatment plant is a Significant Infrastructure Project when:
    - the treatment plant is in Wales or the Welsh marine area,
    - the treatment plant, when constructed, is expected to have a capacity exceeding a population equivalent of 500,000, or,
    - in the case of an alteration, the effect of the alteration is expected to be to increase by more than a population equivalent of 500,000 the capacity of the plant.

33. The construction or alteration of infrastructure for the transfer or storage of waste water is a Significant Infrastructure Project when:
    - the infrastructure is in Wales or the Welsh marine area,
    - the main purpose of the infrastructure is:
        - the transfer of waste water for treatment, or
        - the storage of waste water prior to treatment, or both, and
    - the infrastructure is expected, when constructed, to have a capacity for the storage of waste water exceeding 350,000 cubic metres, or, in the case of an alteration of the infrastructure, the effect of the alteration is expected to be to increase the capacity of the infrastructure for the storage of waste water by more than 350,000 cubic metres.

Waste

Section 15 – Hazardous waste facilities

34. Section 15 specifies that the construction of a hazardous waste facility is a Significant Infrastructure Project if:
    - the facility is in Wales or the Welsh marine area,
    - the main purpose of the facility is the final disposal or recovery of hazardous waste, and
    - the facility is expected to have the capacity specified in subsection (2).

35. The section also specifies that the alteration of a hazardous waste facility is a Significant Infrastructure Project if:
    - the facility is in Wales or the Welsh marine area,
    - the main purpose of the facility is the final disposal or recovery of hazardous waste, and

- the alteration is expected to increase the capacity of the facility as specified in subsection (3)(c).

Section 16 – Radioactive waste geological disposal facilities

36. Section 16 specifies that development relating to a radioactive waste geological disposal facility is a Significant Infrastructure Project where it is:
    - the construction of one or more boreholes in Wales or the Welsh marine area to a depth of at least 150 metres beneath the surface of the ground or seabed, and their main purpose is to obtain data or samples to determine the suitability of the site for a radioactive waste geological disposal facility.
    - the construction of a radioactive waste geological disposal facility in Wales or the Welsh marine area.

Power to amend

Section 17 – Power to add, vary or remove projects

37. Section 17 allows the Welsh Ministers to amend Part 1 by regulations in order to add a new type of project to the definition of significant infrastructure project or to vary or remove the existing significant infrastructure projects defined in the Act. Projects may only be added or varied if the new project, or any variation to an existing project, is for the carrying out of works in the fields of energy, flood prevention, minerals, transport, water, waste water and waste and the works are to be carried out in Wales, the Welsh marine area, or both.

Interpretation

Section 18 – Cross-border projects

38. Section 18 provides that references in Part 1 to development being "in Wales" or "in the Welsh marine area" include development partly in those areas. It also provides that where infrastructure consent is required for development that is partly in Wales or the Welsh marine area, infrastructure consent is required only to the extent the development is in Wales or the Welsh marine area.

Part 2 – Requirement for infrastructure consent

39. Part 2 of the Act imposes a requirement for infrastructure consent to be obtained for development which is or forms part of a significant infrastructure project, and makes provision about the effect of this requirement on other statutory regimes.

The requirement

Section 19 – Requirement for infrastructure consent

40. Section 19 imposes a requirement to obtain the consent of the Welsh Ministers for development which is, or forms part of, a significant infrastructure project (as defined in section 1). The consent is referred to in the Act as "infrastructure consent".

Section 20 – Effect of requirement for infrastructure consent

41. Section 20(1) lists the consents, permissions and authorisations which are not required to be obtained or given in relation to a development to the extent that infrastructure consent is required for the development.

42. Subsections (2) to (4) list particular orders and authorisations which cannot be made, confirmed or given to the extent that infrastructure consent is required.

Powers to change the requirement or its effect

Section 21 – Power to add or remove types of consent

43. Section 21 allows the Welsh Ministers to amend section 20(1) and (2) by regulations to add or remove a type of consent or to vary the cases under which a type of consent falls within section 20(1) or (2). Section 21 also allows the Welsh Ministers to make further provision about the types of consent that are, and are not, within section 20(1) or (2) and the cases in relation to which a type of consent is or is not within section 20(1) and (2).

44. Subsection (2) allows regulations to amend, modify, repeal or revoke an enactment.

45. Subsection (3) defines "consent" for the purposes of the section.

Section 22 – Directions specifying development as a significant infrastructure project

46. Section 22 provides that the Welsh Ministers may give a direction specifying that a specific development is a significant infrastructure project, if—
    - the development, when completed, is wholly or partly in Wales or the Welsh marine area,
    - the development is or forms part of a project that the Welsh Ministers consider to be of national significance, and
    - the development is of a description specified in regulations.

47. Subsection (3) clarifies that the power of direction under subsection (1) applies to a development only to the extent that the development is in Wales or in the Welsh marine area.

48. Subsection (4) provides that the Welsh Ministers may require an authority to which an application for consent or authorisation has been, or may be, made to provide any information required by the Welsh Ministers to enable them to make a direction under subsection (1) and under which terms the direction should be given.

Section 23 – Directions for applications to be treated as applications for infrastructure consent

49. Section 23 provides that if the Welsh Ministers give a direction under section 22, the Welsh Ministers have the power to direct that—
    - an application that has been made for a permission, authorisation, consent etc. mentioned in section 20 is to be treated as an application for infrastructure consent, or
    - a proposed application for such a consent is to be treated as a proposed application for infrastructure consent.

50. Directions made under this section may provide for specified provisions of any enactment (including enactments in the Act) to have effect in relation to the application or proposed application with any modifications specified in the direction or to be treated as having been complied with in relation to the application or proposed application.

51. If the Welsh Ministers give a direction under this section, the relevant authority must refer the application, or the proposed application, to the Welsh Ministers. The "relevant authority" is the authority to which the application is made, or is proposed to be made.

52. If the Welsh Ministers are considering whether to give a direction under this section they may also direct the relevant authority to take no further action until further notice.

Section 24 – Directions specifying that development is not a significant infrastructure project

53. Section 24 provides that the Welsh Ministers may give a direction specifying that a development that would otherwise be a significant infrastructure project is not classed as one for the purpose of this Act. A direction may only be given under this section if the development is partly in Wales or the Welsh marine area.

54. The Welsh Ministers must publish the direction and report to the Senedd that a direction has been given.

Section 25 – Directions under section 22 to 24: general provision

55. Section 25 states that any direction made under sections 22 to 24 may be given subject to conditions and may specify the period of time for which it has effect.

56. A direction made by the Welsh Ministers under these sections can be given at the request of a developer or without such a request being made. The Welsh Ministers are not required to consider a request for a direction unless it is a "qualifying request" from a developer. A "qualifying request" is a request in writing for a direction that specifies the development to which it relates. After making a decision on a qualifying request, the Welsh Ministers must give reasons for their decision to the person who made the request.

Section 26 – Directions under section 22: regulations about procedure

57. Section 26 gives the Welsh Ministers power to make regulations about procedural matters in connection with directions under sections 22 to 24 of this Act.

Part 3 – Applying for infrastructure consent

58. Part 3 of the Act sets out the pre-application procedure, how an application for infrastructure consent is to be made to the Welsh Ministers and the requirements for publicity and notification. It also sets out procedures that relate to an application for infrastructure consent that requests the compulsory acquisition of land.

Assistance for applicants

Section 27 – Provision of pre-application services

59. Section 27 provides the Welsh Ministers with a power to make regulations about the provision of pre-application services by the Welsh Ministers, local planning authorities in Wales or Natural Resources Wales. Pre-application services are intended to assist prospective applicants prior to the submission of an application for infrastructure consent.

60. The power to make regulations includes the power to make provision regarding:
    - the circumstances in which pre-application services must be provided,
    - the form and content of a request for pre-application services, including the information required to be submitted with a request,
    - what services must be provided by the Welsh Ministers, local planning authorities and Natural Resources Wales, including when and how they are provided,
    - requirements for the Welsh Ministers, local planning authorities and Natural Resources Wales to publish the range of pre-application services they provide, and
    - other steps required to be taken by any person in relation to the provision of pre-application services.

Section 28 – Obtaining information about interests in land

61. Section 28 enables the Welsh Ministers to authorise a person applying ("the applicant") for infrastructure consent to serve notice on the persons specified in subsection (4).

62. The recipient of a notice is required to give to the applicant in writing the name and address of any person the recipient believes is an owner or occupier of the land or has some interest in or power over the land.

63. The purpose of this requirement is to enable the applicant to comply with provisions of, or made under, section 29 (provisions about notice of proposed application), 30 (provisions about pre-application consultation and publicity), and sections 64 to 72 (provisions in orders authorising compulsory purchase).

64. The section also enables the Welsh Ministers to authorise the applicant to serve a notice requiring the recipient to give to the applicant in writing the name and address of any person the recipient believes would be entitled to make a claim for compensation if the application for infrastructure consent were to be approved and development were to take place.

65. The section enables the Welsh Ministers to make regulations about a notice given under this section and sets out under subsection (4) persons required to be notified where there is a proposed application or application for infrastructure consent that includes a compulsory acquisition request.

66. This section makes it an offence where a person has failed without reasonable excuse to comply with a notice given under the section, in the case where they have provided false information. The offence is a summary offence and is punishable following conviction by a fine.

67. Where the offence is committed by a corporate body, officers of that body can be held liable for the offence also: see section 135.

Pre-application procedure

Section 29 – Notification of proposed application

68. Section 29 requires any person who proposes to make an application for an infrastructure consent to notify:
    - the Welsh Ministers;
    - each local planning authority and community council for the area in which the proposed development is located where a proposed development is in Wales;
    - Natural Resources Wales and each local planning authority and community council the person considers appropriate where the proposed development is in the Welsh marine area;
    - constituency and regional Members of the Senedd for each area where the proposed development is located;
    - Members of Parliament who represent constituencies for each area where the proposed development is located; and
    - any other persons, or person of a description prescribed in regulations of the application.

69. A notification under this section must comply with any requirements specified in regulations, which may include:
    - the form and content of a notification,
    - what information, documents or other materials must accompany a notification, and
    - how and when a notification is to be given.

70. Upon receiving a notification which complies with all requirements under this section, the Welsh Ministers will be required to send written notice to the person who originally submitted a notification form, confirming it has been accepted. The prospective applicant may proceed to pre-application consultation.

71. This section also enables the Welsh Ministers to make regulations regarding (among other things):
    - the form and content of the notice,
    - how a notice is to be given, and
    - the period within which such notices are to be given.

72. The requirement to notify the Welsh Ministers under this section does not apply if a proposed application is being made where a direction specifying development as a significant infrastructure project was made under section 22.

Section 30 – Pre-application consultation and publicity

73. Section 30 requires a person who proposes to submit an application for infrastructure consent to carry out consultation on a proposed application prior to its submission. Any consultation or publicity undertaken prior to a prospective application receiving notice from the Welsh Ministers under section 29 shall not be treated as consultation or publicity under this section.

74. This section also provides the Welsh Ministers with a power to make provision in regulations for, or in connection with, consultations required by this section, including (among other things) provision:
    - about who must be consulted,
    - about how consultations must be carried out,
    - about the matters to be consulted on, including the benefits for people living in the area of the proposed development,
    - about responding to consultations, including responding by preparing and publishing a report,
    - about timetables in connection with consultations, and
    - about how consultations must be publicised.

Application procedure

Section 31 – Change in the person who proposes to apply for infrastructure consent

75. Section 31 specifies that the duties in section 29(1) and 30(1) do not apply to a person proposing to apply for infrastructure consent under section 32 ("person A") if notice has already been given in respect of the proposed development, or substantially the same proposed development, by a different person and that either—

- the notice identifies person A as the person who will be applying for infrastructure consent, or
- the arrangements for person A to make the application are made during, or as a result of, the consultation carried out under section 30.

Section 32 - Applying for infrastructure consent

76. Section 32 requires an application for infrastructure consent to be made to the Welsh Ministers and provides that infrastructure consent may only be given if an application is made for it.

77. There is also a requirement for an application for infrastructure consent to specify the development to which it relates and that it must include a pre-application consultation report and a draft infrastructure order.

78. This section also enables the Welsh Ministers to make regulations that make provision about applications. The provisions may include (among other things) provision about:

- the form and content of an application,
- how an application is made,
- what information, documents or other materials must be included in an application,
- how an application is processed,
- how an application may be varied or withdrawn,
- notices relating to an application, and
- the period within which an application must be made (including any extensions of time).

79. The regulations may also confer a function on any person, including allowing the person to exercise discretion.

Section 33 – Deciding on the validity of an application and notifying the applicant

80. Section 33 requires the Welsh Ministers, on receiving an application for infrastructure consent, to decide whether or not to accept an application as valid.

81. An application must be considered valid if it is received within the period specified in regulations and complies with the requirements imposed by or under section 32. The Welsh Ministers must give notice to the applicant of a decision to accept the application as a valid application.

82. Where an application does not comply with the requirements in this section or section 32 and so cannot be accepted by the Welsh Ministers, they must notify the applicant of this decision, and give the reasons why it cannot be accepted as valid.

Section 34 – Notice of accepted applications and publicity

83. Section 34 requires the Welsh Ministers to notify certain parties where they have accepted an application as valid.

84. Where development is in Wales notice must be given to each local planning authority and community council in which the proposed development is located. Notice must also be given to constituency and regional Members of the Senedd and to Members of Parliament who represent each area where a proposed development is located.

85. Where development is in the Welsh marine area, notice must be given to any local planning authority or community council the Welsh Ministers consider appropriate and Natural Resources Wales. Notice must also be given to constituency and regional Members of the Senedd, in addition to Members of Parliament that the Welsh Ministers consider appropriate. The Welsh Ministers must also notify any other persons specified in regulations.

86. This section also requires the Welsh Ministers to publicise an application in the way specified in regulations and in any notice or publicity include the date by which any representations must be received, which will not expire before the end of a minimum representation period specified in regulations.

87. However, the Welsh Ministers have the ability to extend the deadline by which representations must be received and may also extend the deadline more than once. Where this power is used, the Welsh Ministers are required to undertake publicity and notification again, specifying the new date by which representations must be received and their reasons for extending the deadline.

88. This section also allows for the Welsh Ministers to direct the applicant to notify persons of an application and publicise an application in the way specified in the direction. Any publicity must include the date by which any representations must be received, which will not expire before the end of a minimum representation period specified in regulations.

89. Where a direction is given under subsection (10), and the deadline is extended, the Welsh Ministers must give a further direction requiring the applicant to give a further notice to the same persons, and undertake further publicity in the same way.

Section 35 – Regulations about notices and publicity

90. Section 35 provides the Welsh Ministers power to make regulations:

- on the form and content of notices of accepted applications (section 33) and notices of publicity (section 34), how they are given, and the timescales for giving them,
- on how representations are to be given in response to notification or publicity under section 34, the form and content of such representations and timescales for submission,
- imposing a requirement on specified persons to respond to a notice given under section 34(2)(c), and
- on how persons may respond to publicity under section 34 and how representations are to be publicised.

91. Regulations may also confer a function, including a function involving the exercise of a discretion, on any person to ensure publicity and notification requirements are undertaken by the most appropriate party on a case-by-case basis.

Section 36 – Local impact reports

92. Section 36 makes provision about local planning authorities and community councils responding to notification or publicity about proposed development by a local impact report which is a report that gives details of the likely impact of a proposed development within the area of a local authority and community council.

93. Where a proposed development is in the area of a local planning authority and the authority receives notification of an accepted application under section 34(2)(a)(i) the authority must submit a local impact report to the Welsh Ministers before the deadline specified in the notice.

94. A community council which is notified of a proposed development under section 34(2)(a)(ii) may also, but is not required to, submit a local impact report to the Welsh Ministers before the deadline specified in the notice.

95. Where a proposed development is in the Welsh marine area, any local planning authority or community council which is given notice of the proposed development under section 34(2)(b)(ii) may submit a local impact report to the Welsh Ministers before the deadline specified in the notice.

96. Where a planning authority or community council submits a local impact report otherwise than in response to a notice under section 34(2), they must submit the local impact report to the Welsh Ministers before the deadline specified in the publicity undertaken under section 34(3).

97. This section also provides the Welsh Ministers with a regulation-making power to prescribe the form and content of a local impact report and any report submitted to the Welsh Ministers must comply with the requirements specified in the regulations.

Section 37 – Marine impact reports

98. If the draft order submitted in an application for infrastructure consent contains provision for a deemed marine licence, section 37 requires Natural Resources Wales to submit to the Welsh Ministers a marine impact report where it is notified of an application for proposed development in the Welsh marine area.

99. Subsection (2) provides that the Welsh Ministers may also direct Natural Resources Wales to submit a marine impact report in respect of an application for infrastructure consent.

100. Subsection (3) provides that Natural Resources Wales may submit a marine impact report in respect of an application for infrastructure consent otherwise than in response to a notice given under section 34(2)(b) or a direction given under section 37(2).

101. A marine impact report must give details of the likely impact of a proposed development on the marine environment.

102. A report submitted in response to subsection (1) must be submitted to the Welsh Ministers before the deadline specified in the notice. A report submitted in response to a direction under subsection (2) must be submitted to the Welsh Ministers before the deadline specified in the direction. A marine impact report submitted voluntarily, otherwise than in response to a notice or a direction must be submitted within the deadline provided for responding to publicity under section 34(3).

103. This section also provides the Welsh Ministers with a regulation-making power to prescribe the form and content of a marine impact report and any report submitted to the Welsh Ministers must comply with such requirements as are prescribed in regulations.

Section 38 – Notice of persons interested in land to which compulsory acquisition request relates

104. This section provides that where the Welsh Ministers have accepted an application for infrastructure consent that includes a request for authorisation of the compulsory acquisition of land or an interest in or right over land, the applicant must give the Welsh Ministers the names and such other information as may be specified in regulations in relation to persons with an interest in the land. The applicant is required to make diligent inquiry to ascertain the names of affected persons.

Section 39 – Consultation post-application in relation to compulsory acquisition

105. Section 39 provides the Welsh Ministers with a regulation making power to make provision for and in connection with consultation by an applicant for infrastructure consent where the application includes a request for the compulsory acquisition of land. The regulations may include detailed provision about the consultation required, including information that is to be provided during the consultation and its timetable.

Part 4 – Examining applications

106. Part 4 of the Act sets out the processes and procedures for examining applications for infrastructure consent.

Appointing an examining authority

Section 40 – Appointing an examining authority

107. Section 40(1) requires the Welsh Ministers to appoint a person or a panel of persons to examine each valid application for infrastructure consent.

108. Subsection (2) provides that the Welsh Ministers may (but are not required to) appoint a person or a panel of persons to examine an application to revoke or change an infrastructure consent order. In deciding whether to appoint a person or a panel of persons to examine such an application, the Welsh Ministers must apply any criteria set out in a document published under subsection (3).

109. The Welsh Ministers may make or revoke an appointment of a person or person on a panel at any time.

110. This section also provides the Welsh Ministers with a power to make regulations making further provision for, or in connection with, the appointment of a person or a panel under this section.

111. A person or panel of persons appointed under this section is referred to in the Act as an "examining authority".

Examining applications

Section 41 – Examining authority to examine applications

112. Section 41 provides that an examining authority has the function of examining an application in respect of which it has been appointed.

Section 42 – Choice of inquiry, hearing or written procedure

113. Section 42 requires the examining authority to determine how each application it examines is to be examined before the end of a period specified in regulations.

114. The examining authority must determine whether the application is to be examined on the basis of the application and any written representations (if any) about the application at a hearing, at a local inquiry, or by any combination of these procedures. The examining authority must provide for examination of the application to include a hearing, unless the determination provides for a local inquiry or the examining authority considers a hearing would not assist the examination.

115. The examining authority may vary its determination as to how an application is to be examined at any time before the application being examined is decided.

116. The examining authority is required to notify any person or person of a description specified in regulations of its determination under subsection (1). The examining authority must also notify persons specified in regulations if it varies a determination made under subsection (1).

117. This section also requires the Welsh Ministers to publish a document setting out the criteria to be applied by an examining authority in determining how an application is to be examined.

118. The functions of an examining authority are subject to any provision made by regulations under section 43 or 44.

Section 43 – Open-floor hearings

119. Section 43 provides the Welsh Ministers with a power to make regulations to require an examining authority to cause an open-floor hearing to be held in connection with the examination of an application under Part 4. And the regulations may make the requirement to hold an open-floor hearing subject to conditions. In this section an "open-floor hearing" is where each interested party is entitled to make oral representations about the application, subject to the examining authority's powers of control over the conduct of the hearing.

Section 44 – Examination procedure

120. Section 44 provides the Welsh Ministers with a power to make regulations about the procedure to be followed in connection with the examination of an application under Part 4.

Section 45 – Power to enter land in connection with examination

121. Section 45 provides that a person authorised in writing by the Welsh Ministers may, at a reasonable time, enter land in Wales to inspect the land in connection with the examination of an application.

122. Subsection (2) sets out the conditions that apply where a person is entering land. Subsection (2)(e) allows the Welsh Ministers to set other conditions for the entering of land in the giving of their authorisation.

123. A person commits an offence if they intentionally obstruct a person exercising the power to enter land and is liable on summary conviction to a fine.

Section 46 – Power to enter Crown land in connection with examination

124. Section 46 provides that a person must not enter Crown land in connection with the examination of an application, unless they have the permission of a person appearing to be entitled to give it or of the appropriate Crown authority (see section 134 for the definition of "appropriate Crown authority").

125. This section also provides that specified subsections of section 45 do not apply in relation to Crown land.

Section 47 – Power of examining authority to hold local inquiry

126. Section 47 allows an examining authority to hold a local inquiry for the purposes of examining an application.

127. The examining authority may, by summons, require any person to attend an inquiry in accordance with the requirements specified in the summons and to give evidence, and require any person to produce any documents which relate to any matter in question at the inquiry.

128. The summons must specify the time and place at which the person is required to attend. However, the person is not required to attend unless their expenses for attending are paid or offered to them.

129. Where a person refuses or deliberately fails to comply with a requirement of a summons or deliberately alters, suppresses, conceals or destroys a document they are required to produce, they will have committed an offence and can be tried in the Magistrates Court or in the Crown Court. If found guilty, they will be liable to an unlimited fine.

130. The examining authority holding the inquiry may also administer oaths and take evidence on oath.

Section 48 – Access to evidence at inquiry

131. Where a local inquiry is held, this section requires that all oral evidence is to be heard in public and that all documentary evidence is to be open to the public for inspection.

132. But the Welsh Ministers or the Secretary of State (a "ministerial authority") may direct that oral evidence is to be heard and documents are to be inspected by specific persons only (and not the public) if they are satisfied that public disclosure of evidence would likely result in the disclosure of information about national security or measures taken (or to be taken) to ensure the security of any land or property and that the public disclosure of information would be against the national interest.

133. If such a direction is being considered, the Counsel General may appoint a person ("an appointed representative") to represent the interests of persons prevented from hearing or inspecting evidence.

134. This section also provides the Welsh Ministers with a power to make regulations about the procedure to be followed by a ministerial authority before a direction is given where there is an appointed representative and about the functions of an appointed representative.

Section 49 – Payment of appointed representative where access to evidence restricted

135. Section 49 makes provision about paying the appointed representative, whether or not an inquiry takes place.

Section 50 – Assessors

136. Section 50 allows the examining authority or the Welsh Ministers to appoint an assessor to assist in the examination of an application. An assessor might assist with examining a particular specialist matter or specific topic. A person may only be appointed as an assessor if the examining authority or the Welsh Ministers consider the person has suitable expertise to assist the examining authority.

Section 51 – Legal assistance

137. Section 51 allows the examining authority or the Welsh Ministers to appoint a barrister or solicitor to provide legal advice and assistance to the examining authority in connection with the examination under Part 4 of the Act.

138. Where a barrister or solicitor is appointed they may, for example, assist the examining authority by carrying out oral questioning of a person making representations at a hearing or inquiry on behalf of the examining authority.

Section 52 – Reports by examining authority

139. Where the Welsh Ministers have the function of deciding an application, this section requires the examining authority to make a report to the Welsh Ministers. The report must set out the examining authority's findings and conclusions in respect of the application and its recommendations as to the decision to be made on the application.

Section 53 – Power to direct further examination

140. Section 53 allows the Welsh Ministers to direct the examining authority to re-open its examination of an application following receipt of a report by the examining authority.

141. Where an examination is re-opened, it must be undertaken in accordance with any requirements specified in the direction given under subsection (1). The direction must include a statement explaining why it is given and be published as soon as reasonably practicable after it is given.

142. The duty of an examining authority in section 52 applies to any further examination required by virtue of a direction under this section.

Section 54 – Orders relating to costs of parties on examination proceedings

143. Section 54 allows the Welsh Ministers to make orders about the costs of the applicant, a planning authority, the Welsh Ministers themselves or any other party to examination proceedings (which may include costs in respect of a hearing or inquiry that does not take place) and about the person(s) who must pay these costs.

144. Subsection (4) sets out how costs payable by virtue of such an order are recoverable.

Part 5 – Deciding applications for infrastructure consent

145. Part 5 of the Act contains provisions about deciding applications for infrastructure consent.

146. This Part makes provision about who decides an application for infrastructure consent made under section 32 (an "application"), about what the decision-maker must take into account when deciding an application, about the timetable for making the decision, and about making the decision.

Decision maker

Section 55 – Functions of deciding applications

147. Section 55 states that the examining authority has the function of deciding applications for infrastructure consent of a description specified in regulations and that the Welsh Ministers have the function of deciding any other application for infrastructure consent.

148. Subsection (4) provides that the Welsh Ministers may direct that an examining authority has the function of deciding the application instead of the Welsh Ministers, or that the Welsh Ministers have the function of deciding an application instead of an examining authority.

Statutory policies and other relevant matters

Section 56 – Deciding applications: general considerations

149. Section 56 provides that applications for infrastructure consent must be decided by having regard to any infrastructure policy statement that has effect in relation to development of the description to which an application relates ("relevant policy statement"), the National Development Framework for Wales (first published in 2019 with the title *Future Wales: the National Plan 2040*), so far as relevant to development of the description to which an application relates and a marine plan prepared and adopted by the Welsh Ministers (first published in 2019 with the title *Welsh National Marine Plan*). It further provides that any decision on an application for infrastructure consent must be made in accordance with the statutory policies listed in this section, unless relevant considerations indicate otherwise.

150. Subsection (2) provides that if a statutory policy document listed in this section identifies a location as suitable, or potentially suitable, for a particular development, this does not prevent a different decision on an application being made if other relevant considerations indicate this should be the case.

Section 57 – Duty to have regard to specific matters when making decisions on applications

151. Section 57 places a duty on the examining authority or the Welsh Ministers (as the case may be) to have regard to the following when deciding an application for infrastructure consent:
    - any local impact report or marine impact report submitted to the Welsh Ministers before the deadlines specified under sections 36 and 37,
    - any examination carried out under Part 4,
    - any matters specified in regulations in relation to development of the description to which the application relates,
    - the desirability of mitigating, and adapting to, climate change, and
    - any other relevant consideration.

Section 58 – Matters that may be disregarded when making decisions on applications

152. Section 58 provides that the Welsh Ministers or the examining authority may disregard representations in deciding an application for infrastructure consent, if they consider the representations to be:
    - vexatious or frivolous,
    - relate to the merits of policy set out in an infrastructure policy statement, the National Development Framework or any marine plan, or
    - relate to compensation for compulsory acquisition of land or of an interest in or right over land.

153. Regulations may amend the matters that may be disregarded in order to specify further matters or to change or remove matters specified in those regulations.

Timetable

Section 59 – Timetable for deciding application for infrastructure consent

154. Section 59 makes provision about the timetable for deciding applications for infrastructure consent. Subsection (1) states that the examining authority or the Welsh Ministers must decide an application before the end of the period of 52 weeks beginning with the day on which the application is accepted as a valid application or such other period agreed between the applicant and the Welsh Ministers.

155. Section 59(2) gives the Welsh Ministers the power to extend, by direction, the periods for deciding an application mentioned in subsection (1). The Welsh Ministers may give more than one direction in relation to an application (allowing them to extend the decision period multiple times) and may give a direction after the end of the periods mentioned in subsection (1).

156. Subsection (4) requires the Welsh Ministers to notify the applicant and other persons specified in regulations of the direction, to publish the direction and to lay a statement about the direction before Senedd Cymru explaining its effect and why it was given.

157. Subsection (5) requires the Welsh Ministers to provide the Senedd with annual reports on the compliance with the duty imposed by subsection (1) and the exercise of the functions conferred by subsection (2).

158. Subsection (6) allows the period of 52 weeks mentioned in subsection (1)(a) to be amended by regulations.

The decision

Section 60 – Grant or refusal of infrastructure consent

159. When the Welsh Ministers have decided an application, section 60 requires the Welsh Ministers to either make an order granting infrastructure consent or refuse infrastructure consent.

160. When an examining authority has decided an application, this section requires it to either notify the Welsh Ministers of its decision that an order granting infrastructure consent is to be made or refuse infrastructure consent.

161. Where the Welsh Ministers receive a notification from the examining authority that an infrastructure consent order is to be made, the Welsh Ministers must make the order.

162. This section also specifies that where infrastructure consent is either granted or refused, applicants, relevant local planning authorities and community councils, Natural Resources Wales (where a marine impact report has been submitted) and any other person or persons of a description specified in regulations, must be notified of the decision.

163. Regulations under this section may make provision regulating the procedure to be followed if the Welsh Ministers propose to make an infrastructure consent order on terms which are materially different from those proposed in the application.

Section 61 – Development for which infrastructure consent may be granted

164. Section 61 specifies the development for which infrastructure consent may be granted.

165. Infrastructure consent may be granted for development for which an infrastructure consent is required, as well as "associated development".

166. "Associated development" is development that is associated with development that requires infrastructure consent (or any part of it) and is wholly within Wales, wholly within the Welsh marine area, or wholly within Wales and the Welsh marine area.

167. The meaning of "Wales" and the "Welsh marine area" is explained at section 143 (general interpretation).

168. If infrastructure consent is granted for "associated development", none of the consents mentioned in section 20 (as that section may be amended by section 21) are required to be obtained for the "associated development".

Section 62 – Reasons for decision to grant or refuse infrastructure consent

169. Section 62 requires the Welsh Ministers to prepare a statement of their reasons to either make an order granting infrastructure consent or refuse infrastructure consent. A copy of the statement must be sent to the applicant, any planning authority or community council that has submitted a local impact report to the Welsh Ministers in respect of the application, Natural Resources Wales if it has submitted a marine impact report to the Welsh Ministers in respect of the application and any person or person of a description specified in regulations. The statement must be published in such manner as the Welsh Ministers consider appropriate.

170. The section also requires the examining authority to prepare a statement of its reasons for deciding that an order granting infrastructure consent is to be made or refused. A copy of the statement must be sent to the applicant, any planning authority or community council that has submitted a local impact report to the Welsh Ministers in respect of the application, Natural Resources Wales if it has submitted a marine impact report to the Welsh Ministers in respect of the application and any person or person of a description specified in regulations. The statement must be published in such manner as the examining authority considers appropriate.

Part 6 – Infrastructure consent orders

171. Part 6 of the Act contains provisions which relate to infrastructure consent orders. Section 63 specifies what may be included in an infrastructure consent order. Sections 64 to 72 make provisions about orders authorising compulsory acquisition. Sections 73 to 84 provide specific limitations on what can be included in an order, and also provide specific powers to include certain provisions in orders. Section 85 details the procedure for publication of infrastructure consent orders.

172. Sections 86 to 93 provide the Welsh Ministers with powers to change or revoke infrastructure consent orders. Sections 94 to 101 are about the effect of infrastructure consent orders and contain provisions about the duration of an infrastructure consent order, legal challenges, planning obligations and compensation in cases where defence of statutory authority applies in civil or criminal proceedings for nuisance.

Provision in orders: general

Section 63 – What may be included in an infrastructure consent order

173. This section specifies what may be included in an infrastructure consent order.

174. Subsections (1) and (2) provide that an infrastructure consent order may impose requirements relating to the development for which infrastructure consent is granted. The types of requirements which may be imposed include those corresponding to conditions which could have been imposed on the grant of any permission, consent and authorisation, or the giving of any notice which would have been required for the development but for section 20(1) or any provision made under section 84. The requirements that may be imposed also include the obligation to obtain the approval of the Welsh Ministers or any other person, so far as not within section 63(2)(a).

175. Subsection (3) provides that an infrastructure consent order may also make provision relating to, or to matters ancillary to, the development for which consent is granted. The provisions that may be made under this subsection include (but are not limited to) provisions that relate to any of the matters listed in Schedule 1.

176. Subsection (4) specifies that the provision that may be made under subsection (3) includes provision relating to any of the matters specified in Part 1 of Schedule 1.

177. Subsection (5) provides that regulations may add a matter to Part 1 of Schedule 1 or vary or remove any matter listed in Part 1 of Schedule 1.

178. Subsection (6) provides that an infrastructure consent order may apply, modify or exclude an enactment which relates to any matter for which provision may be made in the order. An infrastructure consent order may also amend, repeal or revoke enactments of local application that appear to the Welsh Ministers to be appropriate in consequence of a provision of the order or in connection with the order. An infrastructure consent order may also include such provisions that appear to the Welsh Ministers to be appropriate to give full effect to any other provisions in the order and may also include any incidental, consequential, supplementary, transitional or saving provisions.

179. Subsection (7) states that infrastructure consent orders may not create offences, confer power to create an offence or change an existing power to create offences unless the provision relates to any of the matters listed in paragraph 29(1) of Schedule 1 (creation of certain offences).

180. Subsection (8) states that, to the extent that provision for or relating to a matter may be included in an infrastructure consent order, no provision can be made of the kind of an order under section 14 or 16 of the Harbour Act 1964 or an order under section 1 or 3 of the Transport and Works Act 1992.

Provision in orders authorising compulsory acquisition

Section 64 – Purpose for which compulsory acquisition may be authorised

181. Section 64 provides that an infrastructure consent order may only include provision authorising the compulsory acquisition of land if the Welsh Ministers are satisfied that the land is:
    - required for the development to which the infrastructure consent relates,
    - required to facilitate that development or is incidental to that development, or
    - replacement land given in exchange for the land authorised to be compulsorily acquired under section 70 (commons, open spaces etc: compulsory acquisition of land) or section 71 (commons, open spaces etc: compulsory acquisition of rights over land),

    and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Section 65 – Land to which authorisation of compulsory acquisition can relate

182. Section 65 provides that an infrastructure consent order may only include provision authorising the compulsory acquisition of land if the land is in Wales or the Welsh marine area and one of the following conditions is met:
    - the condition in subsection (2) is that the application for infrastructure consent included a request for compulsory acquisition of the land to be authorised;
    - the condition in subsection (3) is that all persons with an interest in the land consent to the inclusion of this provision;
    - the condition in subsection (4) is that the procedure specified in regulations has been followed in relation to that land.

183. "Wales" and "Welsh marine area" are defined in section 143.

Section 66 – Application of compulsory acquisition provisions

184. Section 66 provides that Part 1 of the Compulsory Purchase Act 1965 applies (with specified modifications) to any infrastructure consent order that contains provisions authorising the compulsory acquisition of land.

185. However, the order itself may make contrary provision.

186. The Compulsory Purchase Act 1965 sets out the procedure for compulsory purchase.

Section 67 – Compensation for compulsory acquisition

187. Section 67 restricts the provision that may be made about compensation for compulsory acquisition in an infrastructure consent order that authorises the compulsory acquisition of land.

Section 68 – Statutory undertakers' land

188. This section sets out the conditions that must be satisfied for an infrastructure consent order to authorise the compulsory acquisition of statutory undertakers' land.

189. Section 68 applies to land ("statutory undertakers' land") that a statutory undertaker has acquired for the purpose of its undertaking, and as a result of a representation made about an application for infrastructure consent, the Welsh Ministers are satisfied that the land is used for the purposes of carrying on the statutory undertakers' undertaking or an interest in the land is held for those purposes.

190. For an infrastructure consent order to be made that includes provision authorising the compulsory acquisition of statutory undertakers' land, the Welsh Ministers must be satisfied that the nature and the situation of the land are such that:

- the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or
- it can be purchased and replaced with other land without any such detriment.

191. Similarly, an infrastructure consent order can include a provision authorising the compulsory acquisition of a right over statutory undertakers' land only if the Welsh Ministers are satisfied that:

- the right can be purchased without serious detriment to the carrying on of the undertaking, or
- any detriment can be remedied by the statutory undertaker using other land.

Section 69 – National Trust land

192. Section 69 applies to land which belongs to the National Trust that is held inalienably by them. It provides that an infrastructure consent order which authorises the compulsory acquisition of such land will be subject to special Senedd procedure if the National Trust has made an objection in a representation about an application for infrastructure consent and this objection has not been withdrawn.

Section 70 – Commons, open spaces etc: compulsory acquisition of land

193. Section 70 applies to land forming part of a common, open space or fuel or field garden allotment, where the acquisition does not involve the acquisition of a new right over land. This section provides that an infrastructure consent order that authorises the compulsory acquisition of such land will be subject to special Senedd procedure unless the Welsh Ministers are satisfied that one of the following applies:

- replacement land has been or will be given in exchange for the land authorised to be compulsorily acquired ("order land") and that the replacement land will be vested in the prospective seller and subject to the same rights, trusts and incidents;
- where the order land is or forms part of an open space only, there is no suitable land to be given in exchange or any suitable land is only available at a prohibitive cost, and it is in the public interest for development to be begun sooner than is likely to be possible if the order were subject to special Senedd procedure;
- where the order land is or forms part of an open space only, it is being acquired for a temporary purpose;
- the land being acquired does not exceed 200 square metres or is required for the widening or drainage of an existing highway (or partly for the widening and partly for the drainage of such a highway), and the giving of land in exchange for it is unnecessary.

194. Where the Welsh Ministers are satisfied that one of these exceptions applies, they must record that fact in the order or otherwise in the instrument or other document containing the order.

195. Any replacement land must be no less in area than the land being compulsorily acquired and must be no less advantageous.

Section 71 – Commons, open spaces etc: compulsory acquisition of rights over land

196. Section 71 applies to land forming part of a common, open space or fuel or field garden allotment. This section provides that an infrastructure consent order that authorises the compulsory acquisition of a new right over such land will be subject to special Senedd procedure unless the Welsh Ministers are satisfied that one of the following applies:

- the order land when burdened with the order right will be no less advantageous than it was before to the person in whom it is vested, any other persons (if any) entitled to rights of common or other rights, and the public;
- replacement land has been or will be given in exchange for the order right and that land has been or will be vested in the persons in which the order land is vested and that replacement land will be subject to the same rights, trusts and incidents as the order land;
- where the land is open space only, there is no suitable land to be given in exchange for the order right or any suitable land is only available at a prohibitive cost, and it is in the public interest for development to be begun sooner than is likely to be possible if the order were subject to special Senedd procedure;
- where the land is open space only, and it is being acquired for a temporary purpose;
- the land over which the right is being acquired does not exceed 200 square metres, or the right is required in connection with the widening or drainage of an existing highway (or in connection partly with the widening and partly with the drainage of such a highway) and the giving of land in exchange for the order right is unnecessary in the interest of the person entitled to rights of common or other rights or in the interests of the public.

197. Where the Welsh Ministers are satisfied that one of these exceptions applies, they must record that fact in the order or otherwise in the instrument or other document containing the order.

198. In this section, "order right" means the right authorised to be compulsorily acquired, and "order land" means the land over which the order right is to be exercisable. "Replacement land" means land which will be adequate to compensate the persons mentioned in the definition of "replacement land" in subsection (9) for disadvantages which would apply to them as a result of the compulsory acquisition of a new right over land.

Section 72 – Notice of authorisation of compulsory acquisition

199. Section 72 provides that regulations must be made by the Welsh Ministers that require a person who has been authorised by an infrastructure consent order to compulsorily acquire land or a person for whose benefit the order authorises the creation of a new right (the "prospective purchaser") to give, publish or display a "compulsory acquisition notice" and to provide the public with access to a copy of the infrastructure consent order to which the notice relates.

200. A "compulsory acquisition notice" is a notice in the form specified in regulations that contains the information set out in subsection (2).

201. The notice must also be sent to the Chief Land Registrar and is to be a local land charge in respect of the land to which it relates.

Provision in orders: specific limitations and powers

Section 73 – Public rights of way

202. Section 73 specifies that an infrastructure consent order cannot extinguish a public right of way over land unless the Welsh Ministers are satisfied that an alternative right of way has been or will be provided or is not required.

203. Where an infrastructure consent order authorises the acquisition of land and extinguishes a non-vehicular public right of way over the land, the order cannot provide for the right of way to be extinguished earlier than the date on which the order is published. And the Welsh Ministers must direct that the right of way revives if the right is extinguished before the acquisition of the land is completed and, at any time after the time that the right is extinguished it appears to the Welsh Ministers that the proposal to acquire the land has been abandoned.

Section 74 – Power to override easements and other rights

204. This section amends section 205 of the Housing and Planning Act 2016 so that the power to override easements and other rights for carrying out building or maintenance work in section 203 of that Act and the subsequent power to pay compensation in section 204 applies where infrastructure consent has been granted for the building or maintenance work.

Section 75 – Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.

205. Section 75 applies where an infrastructure consent order authorises the acquisition of land and the land falls into any of the following categories:

- land in respect of which a statutory undertaker or electronic communications code network operator has a right specified in subsection (2) ("relevant right");
- a "relevant restrictive covenant" applies to the land (which is a restrictive covenant that benefits the statutory undertakers in carrying on their undertakings);
- there is on, under or over the land electronic communications apparatus or apparatus vested in or belonging to statutory undertakers ("relevant apparatus").

206. Where this section applies, an infrastructure consent order may include a provision requiring the extinguishment of a relevant right or relevant restrictive covenant or the removal of relevant apparatus only if the Welsh Ministers are satisfied that doing so is necessary for carrying out the development to which the order relates.

Section 76 – Crown land

207. Section 76(1) provides that an infrastructure consent order can authorise the compulsory acquisition of an interest in Crown land ("Crown land" is defined in section 134) only if the interest is for the time being held otherwise than by or on behalf of the Crown, and the appropriate Crown authority ("appropriate Crown authority" is defined in section 134) consents to the acquisition.

208. Subsection (2) provides that an infrastructure consent order can include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents.

Section 77 – Operation of generating stations

209. This section provides that an infrastructure consent order that authorises the operation of a generating station can only be made if the development to which the order relates is or includes the construction or extension of the generating station.

Section 78 – Keeping electric lines installed above ground

210. This section provides that an infrastructure consent order may authorise electric lines to be kept installed above ground only if the development to which the order relates is or includes the installation of the line above ground.

Section 79 – Diversion of watercourses

211. This section provides that an infrastructure consent order that authorises the diversion of any part of a navigable watercourse can only be made if the proposed new length of watercourse is navigable in a reasonably convenient manner by vessels of a kind that are accustomed to using the watercourse being diverted.

212. If an infrastructure consent order authorises the diversion of any part of a navigable watercourse, the order is also taken to authorise the diversion of any adjacent tow path or other way adjacent to that part.

Section 80 – Highways

213. This section provides that an infrastructure consent order may authorise the charging of tolls relating to a highway only if such a request was included in the application for the order.

Section 81 – Harbours

214. This section sets out the circumstances under which an infrastructure consent order may provide for the creation of a harbour authority, provide for the modification of the powers or duties of a harbour authority and authorise the transfer of property, rights or liabilities from one harbour authority to another.

Section 82 – Discharge of water

215. This section applies to an infrastructure consent order that authorises the discharge of water into inland waters or underground strata. The person to whom infrastructure consent is granted does not acquire a general power to take water or to require discharges to be made from the inland waters or other sources from which the discharge authorised by the order are intended to be made.

Section 83 – Deemed consent under a marine licence

216. This section provides that an infrastructure consent order may deem a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009 for any activity for which the Welsh Ministers are the appropriate licensing authority (as defined in section 113 of the Marine and Coastal Access Act 2009).

217. A person who fails to comply with any conditions attached to the deemed marine licence does not commit an offence under section 104 of the Act, but instead commits an offence under the Marine and Coastal Access Act 2009.

218. The Act does not prevent a deemed marine licence from being varied, suspended, revoked or transferred in accordance with the Marine and Coastal Access Act 2009.

Section 84 – Removing consent requirements and deeming consents

219. Section 84(1) provides that an infrastructure consent order may include provision that removes the requirement for a consent specified in regulations to be granted, or deems a consent specified in regulations to have been granted, if the authority who would usually grant the consent:

- has given its consent to the provision being included in the order before the end of the period specified in regulations, or
- has not refused its consent for the inclusion of such a provision before the end of the period specified in regulations.

220. Subsection (4) allows regulations to provide exceptions to the requirement to meet the conditions set out in subsections (2) and (3).

Procedure for infrastructure consent orders

Section 85 – Infrastructure consent orders: publication and procedure

221. This section requires the Welsh Ministers to publish an infrastructure consent order in such manner as they consider appropriate.

222. But an order must be contained in a statutory instrument if the order contains provision made under section 63(3) relating to any of the matters listed in paragraphs 28 and 29 of Schedule 1 (creation of certain offences by an infrastructure consent order), or is made in exercise of the powers conferred by section 63(6)(a) or (b) (modification of enactments by infrastructure consent order).

223. Where an order is contained in a statutory instrument, subsection (4) requires the Welsh Ministers to lay before Senedd Cymru a copy of the instrument, the latest version of any plan supplied by the applicant in connection with the application and a statement of reasons prepared under section 62 as soon as practicable.

Changing and revoking infrastructure consent orders etc.

Section 86 – Meaning of "decision documents" and "error"

224. This section sets out definitions for the purposes of sections 87 and 88.

Section 87 – Power to correct errors in decision documents

225. This section gives the Welsh Ministers a power to correct errors in a decision document (a "decision document" is the infrastructure consent order or the notice notifying the applicant that their application for infrastructure consent has been refused).

226. The power to correct errors may be exercised by the Welsh Ministers on receiving a request in writing to correct an error from any person or without such a request being made.

227. Subsection (4) provides that if the decision document is an infrastructure consent order, the power to correct errors must be exercised by order, and if the order being corrected is contained in a statutory instrument, the power must be exercised by statutory instrument.

228. Subsection (5) provides that if the decision document is a notice of refusal, the Welsh Ministers must exercise their power to correct the document by giving the applicant a notice.

Section 88 – Correcting errors: regulations

229. This section provides the Welsh Ministers with a power to make regulations regarding the procedure for correcting an error in a decision document.

230. The regulations may include, for example, provision regarding:

- any consultation that must take place,
- the circumstances in which the Welsh Ministers must publish a statement explaining the reason for correcting the error,
- the effect of making a correction and not making a correction, and
- when a correction takes effect.

Making changes to, and revoking, infrastructure consent orders

Section 89 – Definitions

231. This section sets out definitions for the purposes of sections 90 and 91.

Section 90 – Power to change or revoke infrastructure consent orders

232. This section gives the Welsh Ministers a power to make a change to an infrastructure consent order and to revoke an infrastructure consent order.

233. The provision that may be made by a way of a change to an infrastructure consent order includes any provision that may be made under section 63 (what may be included in an infrastructure consent order), but this is subject to the rules in this section.

234. The power to change or revoke an infrastructure consent order may be exercised on an application made by the applicant or a successor in title of the applicant, a person with an interest in the land or any other person for whose benefit the infrastructure consent order has effect, and, in the circumstances set out in subsection (4), an application can be made by a planning authority.

235. The Welsh Ministers may also change or revoke an infrastructure consent order without an application being made.

236. The Welsh Ministers may refuse to exercise the power if they consider the development, as a result of the change, should be the subject of an application for a new infrastructure consent order.

237. Subsection (7) gives examples of some of the things that the power under subsection (1) to change or revoke infrastructure consent orders can be used to do. It includes, for example, requiring the removal or alteration of buildings or existing requirements and requiring the discontinuance of a use of land.

238. Subsection (8) makes it clear that existing building or other operations which have already been carried out are not affected by the exercise of the power in subsection (1), unless the change or revocation requires the removal or alteration of building works.

Section 91 – Procedure: changing and revoking infrastructure consent orders

239. This section provides the Welsh Ministers with a power to make regulations about the procedure for changing and revoking infrastructure consent orders.

240. The regulations may, for example, make provision about how an application for changing or revoking an infrastructure consent must be made, the decision-making process for such an application and the effect of a decision to exercise the power to change or revoke an order.

241. This section provides that where a person has an interest in some, but not all, of the land to which an infrastructure consent order relates, the person may make an application to change or revoke only in respect of the land in which the person has an interest.

242. This section requires a change or revocation of an infrastructure consent order which is contained in a statutory instrument to also be contained in a statutory instrument.

Section 92 – Changing and revoking infrastructure consent orders: formalities

243. This section requires the Welsh Ministers to publish an order made under section 87 or 90 or a notice given under section 87 in a manner that they think is appropriate, but if the order is required to be contained in a statutory instrument, the Welsh Ministers must lay a copy before Senedd Cymru.

Section 93 – Changing or revoking an infrastructure consent order: compensation

244. Provision about compensation for changing or revoking an infrastructure consent order is made in Schedule 2.

Effect of infrastructure consent orders

Section 94 – Duration of infrastructure consent order

245. This section provides that where consent for development is granted by an infrastructure consent order, that development must begin within a period specified in regulations, or such other period as is specified in the order. Failure to commence development within the applicable period will result in the infrastructure consent order ceasing to have effect at the end of that period.

246. Where the infrastructure consent order authorises the compulsory acquisition of land, subsection (3) provides that any steps that may be set out in regulations must be taken before the end of a period specified in regulations or such other period as is specified in the order. If these steps are not taken within the applicable period, the authority provided by the order to compulsorily acquire the land ceases to have effect.

Section 95 – When development begins

247. This section states that development is taken to begin on the earliest day that any material operation comprised in, or carried out for the purposes of, the development begins to be carried out.

248. "Material operation" means any operation, but there is a power in subsection (2) for the Welsh Ministers to set out in regulations kinds of operations that are not a "material operation".

Section 96 – Legal challenges

249. This section provides that:

- an infrastructure consent order,
- a refusal of infrastructure consent,
- a decision not to accept an application as valid,
- a decision relating to correcting errors in a decision document,
- a decision relating to changing or revoking an infrastructure consent order, or

- anything else done or omitted to be done by the Welsh Ministers or an examining authority in relation to an application for infrastructure consent, or an application to change or revoke an infrastructure consent order,

may only be challenged by means of judicial review and in accordance with the provisions of this section. In particular, the section specifies the period within which each claim must be made.

Section 97 – Benefit of infrastructure consent order

250. Section 97 provides that an infrastructure consent order will have effect for the benefit of the land in respect of which the order is made and all those for the time being interested in the land, unless the order makes provision to the contrary.

Section 98 – Planning obligations

251. Section 98 amends the Town and Country Planning Act 1990 ("the TCPA") so as to allow the applicant for infrastructure consent to enter into agreements with local authorities, in the same way as a developer seeking planning permission under the TCPA is able to. These agreements are called "infrastructure consent obligations".

252. Subsection (3) amends section 106A of the TCPA. The effect of the amendment is that an infrastructure consent obligation may be varied or discharged by agreement between the Welsh Ministers and the person against whom the infrastructure consent obligation is enforceable. The amendment also provides that the person against whom the infrastructure consent obligation is enforceable may apply to the Welsh Ministers for it to be discharged or varied (if the Welsh Ministers decided or will decide the application in connection with which the obligation was entered into).

253. It will be for the local planning authority to enforce the obligation.

254. Subsection (5) makes provision about legal challenges in connection with planning obligations.

Section 99 – Blighted land

255. An infrastructure policy statement identifying a location as a suitable (or potentially suitable) location for a significant infrastructure project may create blight at that location, affecting the values of land. Blight may also result from an application being made for an infrastructure consent order authorising the compulsory acquisition of land or from such authorisation being given.

256. Section 99 amends the Town and Country Planning Act 1990 ("the TCPA") so as to allow owner-occupiers affected in this way to have the benefit of the existing provisions of the TCPA relating to blight by making these descriptions of land "blighted land" for the purpose of the TCPA.

257. The TCPA provides a procedure which enables persons with certain interests in the land that is blighted to serve a notice on an "appropriate authority" requiring the authority to purchase their interest. The effect of subsection (6) is that the "appropriate authority" in the case of blight caused by an infrastructure policy statement is the statutory undertaker named as an appropriate person to carry out the development specified in the infrastructure policy statement, or the Welsh Ministers where there is no such named undertaker. The Welsh Ministers are to determine any disputes as to who the appropriate authority is.

258. Subsection (4) prevents the appropriate authority from serving a counter-notice to a blight notice on grounds of having no intention of conducting the development.

Section 100 – Nuisance: statutory authority

259. Section 100 confers statutory authority for carrying out development for which consent is granted by an infrastructure consent order and for doing anything else authorised by the order. Subsection (2) provides that statutory authority is conferred only for the purpose of providing a defence in civil and criminal proceedings for nuisance. Subsections (1) and (2) are subject to any contrary provision made by an infrastructure consent order.

Section 101 – Compensation in case where defence of statutory authority applies

260. Section 101 confers a right to compensation in cases where, by virtue of section 100 or the terms of an infrastructure consent order, there is a defence of statutory authority in civil or criminal proceedings for nuisance in respect of any authorised works.

261. Subsection (2) defines "authorised works" as development for which an infrastructure consent order is granted and anything else authorised by the order.

262. Subsection (3) imposes a duty on the person who carries out the authorised works or on whose behalf such works are carried out, to pay compensation to any person whose land is injuriously affected by the carrying out of the authorised works.

263. Disputes about compensation under subsection (3) are referred to the Upper Tribunal.

264. Subsection (5) provides that section 10(2) of the Compulsory Purchase Act 1965 (limitations on compensation) applies to section 101(3) as it applies to section 10(2) of the Compulsory Purchase Act 1965.

265. Any rule or principle applied to the construction of section 10 of the Compulsory Purchase Act 1965 must be applied to the construction of section 101(3) with any necessary modifications.

266. Subsection (7) provides that Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works) applies in relation to authorised works as if:
    - references in that Part to any public works were to authorised works;
    - references in that Part to the responsible authority were to the person for whose benefit the infrastructure order has effect for the time being;
    - sections 1(6) and 17 were omitted.

267. An infrastructure consent order cannot include provision the effect of which is to remove or modify the application of section 101.

Interpretation

Section 102 – Meaning of "land"

268. Section 102 provides that, in Part 6, "land" includes any interest in or right over land.

Part 7 – Enforcement

269. Part 7 of the Act contains provisions about offences relating to development without infrastructure consent and a breach of, or failure to comply with, the terms of an infrastructure consent order and the ability to serve notices of unauthorised development.

270. This Part makes provision about what enforcement tools are available to local authorities and the Welsh Ministers to aid in undertaking enforcement duties, in addition to the time limits within which any enforcement action may be taken.

Offences

Section 103 – Development without infrastructure consent

271. This section provides that an offence is committed where a person carries out, or causes to be carried out, development which requires infrastructure consent, but at the time, no such consent is in force in respect of the development.

272. A person may be tried in the magistrates' court or the Crown Court and where found guilty, will be liable to an unlimited fine.

Section 104 – Breach of terms of infrastructure consent order

273. This section provides that an offence is committed if, without a reasonable excuse, a person carries out, or causes to be carried out, development which is in breach of the terms of an infrastructure consent order or fails to comply with the terms of an infrastructure consent order.

274. It is a defence for a person charged with an offence under this section to prove the breach or failure to comply only occurred because of an error in the infrastructure consent order and that the error has been corrected under section 87.

275. A person may be tried in the magistrates' court or the Crown Court and, where found guilty, will be liable to an unlimited fine.

Section 105 – Time limits

276. This section sets out time limits for bringing charges in relation to the offences created by sections 103 and 104.

Section 106 – Powers to enter land for enforcement purposes

277. This section allows a person authorised by a relevant planning authority or the Welsh Ministers to enter land for the purposes of assessing whether an offence under section 103 or section 104 is being or has been committed. This power may be exercised at any reasonable time and only if there are reasonable grounds for entering the land for the purpose in question.

278. Where a person is authorised to enter land, they must produce evidence of their authorisation to do so and the purpose of entry (if requested) and may take on to the land any other persons considered necessary. They must also leave the land effectively secured against trespassers if they leave when no owner or occupier is present.

279. This section also specifies a person authorised to enter land may not demand entry to a building which is used as a dwelling unless 24 hours' notice of the intended entry is given to every occupier of the building.

Section 107 – Warrant to enter land

280. This section provides that a justice of peace may issue a warrant conferring a power to enter land if the justice of the peace is satisfied that there are reasonable grounds for entering land to assess whether an offence under section 103 or 104 is being, or has been, committed on or in respect of the land and that admission to the land has been refused or is reasonably expected to be refused, or the case is one of urgency.

281. An admission to land is to be treated as a refusal if no reply is received to a request for admission within a reasonable period.

282. Where a warrant is issued under this section, it can only confer a power to enter land on one occasion and at a reasonable time, unless the case is one of urgency. The warrant will cease to have effect 1 month from the day it is issued.

283. Where a person is authorised to enter land, they must produce evidence of their authorisation to do so and the purpose of entry, if requested and may take on to the land any other persons considered necessary. They must also leave the land effectively secured against trespassers if they leave when no owner or occupier is present.

Section 108 – Rights of entry: supplementary provisions

284. This section creates an offence where a person intentionally obstructs a person exercising a power of entry under section 106 or 107. A person may be tried in the magistrates' court and, where found guilty, will be liable to an unlimited fine.

285. This section also provides that if damage is caused to land or other property in the exercise of the power to enter land, the person suffering the damage may recover compensation from the planning authority who authorised entry, or the Welsh Ministers if they authorised entry.

286. A claim for compensation under this section must be made in writing within 12 months beginning with the day the damage was caused or the last day damage was caused if it was over a period of more than 1 day. Any disputes about compensation must be referred to and determined by the Upper Tribunal in accordance with section 4 of the Land Compensation Act 1961.

Section 109 – Rights of entry: Crown land

287. This section provides that the power to enter land with or without a warrant under sections 106 and 107 does not apply to Crown land.

Section 110 – Marine enforcement powers

288. This section amends the Marine and Coastal Access Act 2009 ("the 2009 Act") by inserting new section 243A into that Act.

289. New section 243A provides the Welsh Ministers with a power to appoint persons for the purposes of enforcing the Infrastructure (Wales) Act 2024 in Wales and in the Welsh inshore region (and in relation to any vessel, aircraft or marine structure in this region, with the exception of any British warship).

290. The power gives the Welsh Ministers a wide discretion in who they appoint and gives a person appointed under this section the power under section 263 of the 2009 Act (power to require information relating to substances and objects) as well as the common enforcement powers set out in Chapter 2 of Part 8 of the 2009 Act (common enforcement powers) which include:

- powers of entry, search and seizure,
- powers to record evidence of offences and to require names and addresses,
- powers to require the production of licences,
- powers to require attendance of certain persons,
- powers to direct vessels or marine installations to port,
- powers relating to assisting enforcement officers, and
- powers to use reasonable force.

Information notices

Section 111 – Power to require information

291. This section allows the relevant planning authority to serve an information notice on any person who is the owner or occupier of land or has any other interest in it, or who is carrying out operations on the land or using it for any purpose, where they consider an offence under section 103 or section 104 may have been committed on or in respect of land in its area.

292. It also allows the Welsh Ministers to serve an information notice on any person who is the owner or occupier of land or has any other interest in it, or who is carrying out operations on the land or using it for any purpose, where they consider an offence under section 103 or section 104 may have been committed on or in respect of land in Wales.

293. The Welsh Ministers may also serve an information notice on a person carrying out operations in the Welsh marine area where they suspect an offence to have been committed in or in respect of the Welsh marine area.

294. This section also prescribes what an information notice must specify and what it may specify and requires the person on whom a notice is served to provide the information specified in the notice so far as they are able to do so. The notice must set out the likely consequences for failing to respond.

Section 112 – Offences of failing to comply with information notices

295. Section 112(1) provides that an offence is committed where a person on whom an information notice has been served does not comply with a requirement of the notice after a period of 21 days from the day on which the notice was served, but there is a defence if the person can prove a reasonable excuse for failing to comply. This is a summary offence punishable by a fine.

296. Subsection (5) provides that it is an offence to knowingly or recklessly provide information which is false or misleading. This is an either way offence punishable by a fine.

297. It is possible under this section for a person to be convicted of more than one offence in relation to the same information notice by reference to different periods.

Notices of unauthorised development

Section 113 – Notice of unauthorised development

298. This section provides the relevant planning authority or the Welsh Ministers with the power to issue a notice of unauthorised development when a person is found guilty of an offence under sections 103 and 104 in respect of land.

299. For offences under section 103, a notice may specify the steps to be taken to remove the development and restore the land to its condition before the development was carried out, which must be undertaken within a period specified in the notice.

300. For offences under section 104, a notice may require the person on whom a notice is served to remedy the breach of failure to comply within a period specified in the notice.

301. Where a notice of unauthorised development is served, this section specifies the notice may specify different periods for taking different steps.

302. This section also provides the Welsh Ministers power to make regulations which may prescribe additional matters which must be specified in a notice of unauthorised development.

Compliance with notices of unauthorised development

Section 114 – Order to permit steps required by notice of unauthorised development

303. This section allows the owner of land to apply for an order to a magistrates' court to require another person with an interest in the land to permit the owner to take such steps as required by a notice of unauthorised development.

304. Where the court is satisfied that a person with an interest in the land is preventing the owner from taking such steps, the court may make an order.

Section 115 – Power to enter land and take steps required by notice of unauthorised development

305. This section provides that where any steps required to be taken by a notice of unauthorised development have not been taken within the period specified in the notice, the planning authority who issued the notice of unauthorised development, or the Welsh Ministers if they issued the notice, may enter the land to which the notice relates at any reasonable time and take the step(s) themselves.

306. A person who intentionally obstructs a person exercising their power under this section commits an offence. A person may be tried in the magistrates' court and, where found guilty, will be liable to an unlimited fine.

Section 116 – Recovery of costs of compliance with notice of unauthorised development

307. This section provides that where a relevant planning authority or the Welsh Ministers exercise the power under section 115, they may recover their costs from a person who is then the owner of the land.

308. Any costs recoverable are, until recovered, to be a charge on the land to which the notice of unauthorised development relates and takes effect as a local land charge at the beginning of the day after the day the planning authority or the Welsh Ministers completes the step(s) specified in the notice of unauthorised development to which the costs relate.

309. This section also specifies materials may be removed from the land when taking steps required by a notice of unauthorised development and where the owner of the materials does not claim them and take them away within 3 days beginning the day after they are removed, the materials may be sold.

310. If materials are sold, the proceeds must be paid to the person who owned the materials, after deducting any recoverable costs.

311. Costs may not be recovered under this section from the Crown.

Temporary stop notices

Section 117 – Power to issue temporary stop notice

312. This section provides the power for a relevant planning authority to issue a temporary stop notice in relation to land in their area where they consider an activity has been, or is being carried out, which constitutes an offence under section 103 or section 104 and the activity ought to be stopped immediately. The power to issue a temporary stop notice does not extend to the Welsh Ministers.

313. This section also prescribes what must be specified in a temporary stop notice, who a temporary stop notice may be given to and how such notices must be displayed.

Section 118 – Restrictions on power to issue temporary stop notice

314. This section provides that a temporary stop may not prohibit the use of a building as a dwelling and any activity or circumstances which may be specified in regulations.

315. Temporary stop notices may also not prohibit any activity which has been carried out, or is being carried out, for at least 4 years before the date on which a temporary stop notice is first displayed, with the exception of an activity consisting of, or incidental to, building, engineering, mining or other operations, or the deposit of waste.

Section 119 – Duration etc. of temporary stop notice

316. This section provides that a temporary stop notice takes effect when a copy of the notice is first displayed and ceases to have effect at the end of a period of 28 days, beginning on the date it is first displayed, unless a shorter period is specified in the notice or the court grants an injunction under section 122.

317. This section also specifies that if the relevant planning authority withdraws the notice before the end of the period for which it would otherwise have effect, the notice ceases to have effect when it is withdrawn.

318. Where a temporary stop notice is issued, this section prevents the relevant planning authority from issuing a second or subsequent notice in respect of the same activity, unless the authority has issued a notice of unauthorised development or issued an injunction.

Section 120 – Offence of breaching temporary stop notice

319. This section provides that an offence is committed where a person carries out an activity prohibited by a temporary stop notice at any time when such a notice has effect.

320. However, it is a defence for a person to prove that a copy of the notice was not served on them and that they did not know, and could not reasonably have been expected to know, of the existence of the temporary stop notice.

321. A person may be tried in the magistrates' court or the Crown Court and where found guilty, will be liable to an unlimited fine. It is also possible under this section for a person to be convicted of more than one offence in relation to the same temporary stop notice by reference to different periods.

Section 121 – Compensation for loss due to notice

322. This section provides that where an activity specified in a temporary stop notice is authorised by an infrastructure consent order granted before the day the notice takes effect, or the relevant planning authority withdraws the notice, any person with an interest in land to which a temporary stop notice relates may make a claim for compensation to the relevant planning authority within 12 months for any loss or damage suffered by the person that is directly attributable to the notice.

323. This section does not apply to any activity specified in the notice which is authorised by an infrastructure consent order granted on or after the day a temporary stop notice takes effect, or if the relevant planning authority withdraws a notice after the grant of a consent. This section also specifies the circumstances in which compensation is not payable.

Section 122 – Injunction to restrain prohibited activity

324. This section provides that a relevant planning authority or the Welsh Ministers may apply to the High Court or county court for an injunction to restrain an actual or expected activity which constitutes an offence under either section 103 or section 104. The relevant planning authority may apply for an injunction in relation to land in its area, and the Welsh Ministers may apply for an injunction in relation to land in Wales.

325. The court may grant an injunction on any terms it considers appropriate for the purpose of restraining such activity. An injunction may not be issued under this section against the Crown.

General

Section 123 – Meaning of "relevant planning authority"

326. This section specifies who a relevant planning authority is for the purposes of Part 7 of the Act.

Part 8 – Supplementary functions

327. Part 8 of the Act provides a number of supplementary functions, mainly for the Welsh Ministers, to facilitate the operation of the system established by the Act and to give the Welsh Ministers powers to make regulations to apply fees, adjust the system by disapplying its requirements or making special provision for applications by the Crown (which includes Crown offices and bodies).

Fees

Section 124 – Fees for performance of infrastructure consent functions and services

328. This section provides the Welsh Ministers power to make regulations in relation to the charging of fees by a specified public authority for performing an infrastructure consent function and for the provision of an infrastructure consent service. The regulations may confer a function on any person and may provide for the amounts of fees to be calculated by reference to costs incurred in the performance of any infrastructure consent function.

329. The regulations may make provisions about (among other things):
- when a fee may, and may not, be charged;
- the amount that may be charged;
- what may, and may not, be taken into account in calculating the amount charged;
- who is liable to pay a fee charged;
- to whom fees are to be paid;
- when a fee charged is payable;
- the recovery of fees charged;
- waiver, reduction or repayment of fees;
- the effect of paying or failing to pay fees charged;

- the transfer of fees payable to one person to another person;
- the supply or publication of information for any purpose of the regulations.

Right of entry

Section 125 – Powers of entry to survey land

330. This section provides a power for a person with authorisation from Welsh Ministers to enter land for the purposes of surveying or taking levels of that land in connection with:
    - an application for infrastructure consent (or a proposed application);
    - an infrastructure consent order that authorised the compulsory acquisition of that land or an interest in it or a right over it.

331. This section requires an authorised person entering land to produce evidence of that authorisation, if requested, provide notice of intended entry if the land is occupied and comply with any conditions set out in the authorisation. An authorised person may also take any other persons that are necessary on to the land and must, if leaving the land when no owner or occupier is present, leave it as effectively secured against trespassers as they found it.

332. Authorisation to survey land also includes the right to search and bore to determine the nature of soil or presence of minerals if prior notice of this intention has been provided.

333. This section provides that an offence is committed if a person authorised to enter land is intentionally obstructed from doing so.

334. Compensation for any damage caused to the land or property may be recovered from the person authorised to enter the land.

Section 126 – Powers of entry to survey land: Crown Land

335. This section provides that the powers set out in section 125 also apply to Crown land, subject to the person exercising the power gaining permission to enter the land from the person who appears to have the authority to give it or the appropriate Crown authority (which is defined in section 134).

336. This section also provides that specified subsections of section 125 do not apply in relation to Crown Land.

Infrastructure policy statements

Section 127 – Infrastructure policy statements

337. This section gives Welsh Minsters the power, by notice, to designate a document as an infrastructure policy statement, if it is a document issued by the Welsh Ministers and sets out a policy to guide decision making in relation to significant infrastructure projects. The Welsh Ministers may withdraw the designation of a document as an infrastructure policy statement by notice in writing. Subsection (4) requires the Welsh Ministers to publish and lay before Senedd Cymru each notice designating a document as an infrastructure policy statement and each notice of withdrawal of the designation of a document as an infrastructure policy statement. Subsections (5) and (6) further require the Welsh Ministers to lay any document designated as an infrastructure policy statement before the Senedd and to publish it, if they have not done so previously.

338. The significance of a document being designated under this section is that an examining authority or the Welsh Ministers (as the case may be) must decide an application for infrastructure consent by having regard to any relevant infrastructure policy statement (see section 56(1)).

Register of applications and pre-application services

Section 128 – Register of applications and pre-application services

339. Section 128 requires the Welsh Ministers to maintain a register of:
- applications for infrastructure consent;
- applications received by the Welsh Ministers for pre-application services;
- pre-application services provided by the Welsh Ministers.

340. The Welsh Ministers must include details in the register of valid applications, requests for pre-application services and pre-application services provided.

341. The register must be published (subsection (5)).

342. The Welsh Ministers may, by regulations, require a planning authority to maintain a register of the applications for infrastructure consent in its area, of applications for pre-application services received by the planning authority and of any pre-application services provided by the authority (subsection (6)).

343. The Welsh Ministers may, by regulations, also require Natural Resources Wales to maintain a register of applications that they receive for pre-application services, as well as any pre-application services provided by them in respect of an application.

344. Subsection (8) enables the Welsh Ministers to make regulations in relation to the form, content of any register required by or under the section and may make other provision in respect of public access to documents relating to entries in the register or the timing of entries.

Statutory consultees

Section 129 – Power to consult and duty to respond to consultation

345. Section 129 gives a power to the Welsh Ministers or an examining authority to consult a public authority specified in regulations as part of the examination process with the result that the authority has a duty to give a substantive response to that consultation within a specified timeframe.

346. Regulations may make provision about such consultations.

Welsh Ministers' directions

Section 130 – Directions to public authorities

347. Section 130 allows the Welsh Ministers to give a direction to a planning authority, Natural Resources Wales or a devolved Welsh authority specified in regulations, to do things in respect of an application.

348. Subsection (3) provides that directions may relate to specific applications or authorities or to applications or authorities generally.

349. Regulations may make provision for or in connection with the recovery of costs incurred by public authorities for things done pursuant to a direction of the Welsh Ministers (subsection (4)).

Section 131 – Power to disapply requirements

350. Under section 131 the Welsh Ministers may make regulations giving the Welsh Ministers power to direct that requirements imposed by, under or by virtue of this Act may be disapplied in a case specified in the direction.

351. The regulations must specify the requirements that may be disapplied by direction and impose a duty on the Welsh Ministers to publish any direction and to lay a statement about the direction before Senedd Cymru explaining its effect and why it was made.

Regulations about Crown applications

Section 132 – Applications by the Crown

352. Section 132 provides the Welsh Ministers with the power to make regulations which may modify or exclude any enactments in relation to applications made by the Crown for infrastructure consent or to change or revoke an infrastructure consent order.

353. The regulations may modify or exclude any enactment relating to–
    a. the procedure to be followed before a Crown application is made,
    b. the making of a Crown application, and
    c. the decision-making process for such an application.

Part 9 – General provisions

354. Part 9 of the Act contains general provisions which relate to multiple parts or all of the Act. Sections 136, 137, 138 and 139 make provisions about giving notices, directions and other documents and make provision about the duties that apply when publishing something under the Act. Section 140 makes provisions about the restrictions that apply to any regulations made under the Act or an infrastructure consent order made under the Act and section 141 sets out the procedures for making regulations (Section 85 sets out the procedure for infrastructure consent orders). Sections 144 and 145 provide the Welsh Ministers with powers to make further incidental, consequential, transitional, transitory or saving provisions by regulations. Section 146 sets out transitional and saving provisions.

Development

Section 133 – Meaning of "development"

355. Section 133 sets out the meaning of "development" for the purposes of the Act. Everything that is "development" for the purposes of the Town and Country Planning Act 1990 ("the TCPA") is development for the purposes of the Act, subject to subsections (2) to (4).

356. Section 55(1) of the TCPA defines "development" as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land", subject to further clarifications in that section.

357. Subsection (2) of section 133 provides that "material change in the use" (which is a term used in the definition of "development" in section 55(1) of the TCPA) includes:
    - the conversion in fuel of a generating station to it being fuelled by crude liquid petroleum, a petroleum product or natural gas;
    - an increase in the permitted use of an airport (whether permitted by planning permission under the TCPA or an infrastructure consent order made under the Act).

358. Subsection (3) provides that specific works are to be treated as development to the extent that they would not otherwise be development under the TCPA.

359. Development under the TCPA relates to development of land within the areas of planning authorities and not development in the sea outside the boundaries of their areas. Subsection (4) provides that development under the Act includes operations and changes of use in the sea and other areas covered with waters. The extent to which development in the sea is covered in relation to a Significant Infrastructure Project depends on whether the definition of the Significant Infrastructure Project covers development in the "Welsh marine area". The "Welsh marine area" is defined in section 143.

Crown land

Section 134 – Crown land and "the appropriate Crown authority"

360. This section defines "Crown land", "Crown interest", "Duchy interest" and "the appropriate Crown authority" for the purposes of the Act.

Offences

Section 135 – Offences by bodies corporate

361. This section provides that where an offence is committed under section 28, 103, 104, 112 or 120 by a body corporate and it is proved to have been committed with the consent or connivance of a senior officer of the body or a person purporting to be senior officer of the body, or attributed to their neglect, that person will be guilty of an offence (as well as the body corporate) and is liable to be prosecuted. In this section "senior officer" means a director, manager, secretary or other similar officer of the body corporate.

Giving notices and other documents

Section 136 – Giving notices and other documents

362. This section contains provision about how notices, directions and other documents are to be served.

Section 137 – Giving notices etc. to persons occupying or with an interest in land

363. This section makes further provision about serving a notice or a document on a person interested in land or occupying land.

Section 138 – Giving documents on the Crown

364. This section specifies that any notice or document required by or under the Act to be served on the Crown must be served on the appropriate Crown authority, and the rules about giving notices set out in sections 136 and 137 do not apply. For the purpose of this section, "the Crown" includes the Duchy of Lancaster and the Duchy of Cornwall.

General

Section 139 – Duties to publish

365. Where the Act imposes a duty to publish something, it must be published electronically. Nothing in this section prevents the person subject to the duty from publishing in another way as well as publishing electronically.

Section 140 – Regulations and orders: restrictions

366. This section sets out that regulations under sections 30, 34, 35, 48(6), 63(5), 91(3) 124 and 129 of the Act or an infrastructure consent order or an order under section 90 may include provision that would require the consent of the Secretary of State (i.e. "the appropriate Minister") under any of paragraphs 8(1)(a) or (c), 10 or 11 of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru.

367. This section also provides that regulations under sections 30, 34, 35, 48(6), 63(5), 91(3), 124 and 129 of the Act or an infrastructure consent order or an order under section 90 may include provision that would require consultation of the appropriate Minister under paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru. See correspondence between the Secretary of State and the Welsh Ministers over the period 2023 to 2024[3] confirming consent under Schedule 7B for the provisions, including a commitment to consult the UK Government prior to making regulations which affect reserved bodies.

368. Regulations and orders under any other section of this Act may not include provision that would require the consent of the appropriate Minister under paragraph 8, 10 or 11 of Schedule 7B to the Government of Wales Act 2006 if the provision were included in an Act of Senedd Cymru; and may not include provision that would require consultation of the appropriate Minister under paragraph 11(2) or (2A) of Schedule 7B to that Act if the provision were included in an Act of Senedd Cymru.

Section 141 – Regulations: procedure

369. This section provides that a power to make regulations under the Act is exercisable by statutory instrument.

[3] https://business.senedd.wales/documents/s144189/LJC6-04-24%20-%20Paper%2016%20-%20Letter%20from%20the%20Minister%20for%20Climate%20Change%2022%20January%202024.pdf.

370. Subsection (3) provides that a statutory instrument containing regulations made under the following sections of the Act are to be made under the affirmative procedure (i.e. a draft of the instrument should be laid before, and approved by a resolution of, Senedd Cymru):

- section 17 - power to add, vary or remove projects;
- section 21 - power to add or remove types of consent;
- section 22(2)(c) - directions specifying development as a significant infrastructure project;
- section 55(1) - power for the examining authority to decide certain kinds of applications for infrastructure consent;
- section 58(3) - updating of matters that may be disregarded when making decisions on applications;
- section 59(6) - power to amend the timetable for deciding an application for infrastructure consent;
- section 63(5) - what may be included in an infrastructure consent order;
- section 124 - fees for performance of infrastructure consent functions and services;
- section 130 – directions to public authorities;
- section 131 - power to disapply requirements;
- section 132 – applications by the Crown;
- section 144 - power to make consequential and transitional provision etc., but only where the regulations amend, repeal or otherwise modify a provision of an Act of Parliament, a Measure of the National Assembly for Wales or an Act of Senedd Cymru;
- paragraph 2(1) of Schedule 2.

371. Statutory instruments containing regulations made under any other power in the Act are subject to the negative procedure (i.e. annulment following a resolution of Senedd Cymru).

Section 142 – Directions: general

372. This section requires a direction given under or by virtue of this Act to be in writing.

Section 143 – General interpretation

373. This section defines certain terms used in the Act.

Section 144 – Power to make consequential and transitional provision etc.

374. This section confers upon the Welsh Ministers a regulation-making power which may be used to make supplementary, incidental, or consequential provision and transitional or saving provision. Regulations under this section may amend, modify, repeal or revoke any enactment (including an enactment contained in this Act).

Section 145 – Consequential amendments and repeals

375. This section refers to Schedule 3 which makes provision in consequence of this Act.

Section 146 – Transitional and saving provision

376. This section makes transitional and savings provisions.

Section 147 – Coming into force

377. This section makes provision about when the provisions of the Act come into force.

Section 148 – Short title

378. The short title of this Act is the Infrastructure (Wales) Act 2024.

Schedule 1 – Provision relating to, or matters ancillary to, development

379. Schedule 1 is introduced by section 63. An infrastructure consent order may make ancillary provision (see section 63(3)) and the ancillary provision that may be made includes (among other things) provision that relates to the list of matters in Schedule 1.

Schedule 2 – Compensation for changing or revoking infrastructure consent orders

380. Schedule 2 is introduced by section 93 and makes provision about compensation for changing or revoking an infrastructure consent order.

Paragraph 1 – Changing or revoking an infrastructure consent order: compensation

381. Where an infrastructure consent order is changed or revoked by the Welsh Ministers without an application being made, this paragraph gives a right to compensation for certain losses to persons with an interest in land to which the infrastructure consent order relates, persons with an interest in minerals on such land or persons for whose benefit the infrastructure consent order has effect.

382. On making a claim to the Welsh Ministers, those persons are entitled to be paid compensation by the Welsh Ministers for any expenditure that has been incurred in carrying out work (including certain preparatory work described in sub-paragraph (4)) which is rendered abortive by the change to, or the revocation of, the infrastructure consent order.

383. Those persons are also entitled, on making a claim, to be paid compensation by the Welsh Ministers for any other loss or damage which is directly attributable to the change or revocation.

384. Sub-paragraph (5) specifies that compensation is not payable in respect of certain works and losses.

385. The Welsh Ministers may make regulations about the timeframe and the process for making a claim for compensation under this paragraph.

Paragraph 2 – Compensation for depreciation: introduction and key terms

386. This paragraph provides that paragraphs 3 to 9 apply where compensation for depreciation of more than the minimum amount specified in regulations becomes payable.

387. "Compensation for depreciation" in this paragraph (and paragraphs 3 to 10) means compensation payable in respect of loss or damage consisting of depreciation of the value of an interest in land.

388. This paragraph also sets out other definitions for the purposes of paragraphs 2 to 10.

Paragraph 3 – Apportionment of compensation for depreciation and determination of disputes

389. This paragraph makes provision about apportionment of compensation for depreciation and disputes about such apportionment.

390. Sub-paragraph (1) requires the Welsh Ministers to apportion the compensation for depreciation between different parts of the land to which the claim for compensation relates if they consider it practicable to do so and also requires them to give details of any such apportionment to the claimant and any persons they consider to be substantially affected by the apportionment.

391. Sub-paragraph (2) details how, in carrying out the apportionment, the Welsh Ministers must divide the land into parts and distribute compensation for depreciation between those parts according to how the Welsh Ministers consider those parts are affected by the order that caused compensation to be payable.

392. Sub-paragraph (3) details the persons who may refer a dispute about apportionment of compensation to the Upper Tribunal and sub-paragraph (4) details the persons who are entitled to be heard by the Upper Tribunal.

393. Sub-paragraphs (5), (6) and (7) make rules that apply on a reference of a dispute on apportionment to the Upper Tribunal.

Paragraph 4 – Notice of compensation for depreciation

394. This paragraph details the process to be followed when compensation for depreciation becomes payable.

395. When compensation for depreciation becomes payable, the Welsh Ministers must serve a "compensation notice" on a council of the county or county borough for the area in which the land or any part of the land to which the notice relates is situated, and (if that council is not the planning authority for the area) on the planning authority for the area.

396. Sub-paragraph (2) sets out what a compensation notice must include, and sub-paragraph (3) states that a compensation notice is a local land charge.

Paragraph 5 – Development not to be carried out until compensation paid or secured

397. This paragraph prohibits a person from carrying out certain development on land in respect of which a compensation notice has been registered until any amount that is recoverable in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Welsh Ministers.

398. Sub-paragraph (2) details the development to which the prohibition applies. And sub-paragraphs (3) and (4) set out the circumstances in which the prohibition does not apply.

Paragraph 6 – Amount recoverable by Welsh Ministers in respect of compensation

399. This paragraph sets out the rules that apply to determine the amount that is recoverable by Welsh Ministers in respect of compensation specified in a registered compensation notice.

Paragraph 7 – Payment etc. of amount recoverable

400. Sub-paragraph (1) provides that an amount recoverable is payable to the Welsh Ministers as a single capital payment, as a series of instalments of capital and interest combined or as a series of other annual or periodical payments as the Welsh Ministers may direct. Sub-paragraph (2) details the duties on the Welsh Ministers to take representations into account before they exercise their direction-making power under sub-paragraph 1(c).

401. Sub-paragraph (3) provides that if the amount payable is not paid as a single capital payment, it must be secured in such way that the Welsh Ministers direct.

402. If a person begins development in breach of paragraph 5, under sub-paragraph (4) the Welsh Ministers have the power to serve a notice on the person specifying the amount they consider to be recoverable under paragraph 6 and requiring the person to pay that amount within a period specified in the notice.

Paragraph 8 – Recovery of compensation from acquiring authority on compulsory acquisition or sale

403. This paragraph makes provision about the circumstances in which the Welsh Ministers are entitled to recover compensation from an acquiring authority. This paragraph also makes provision about the amount that is recoverable.

Paragraph 9 – General provisions about compensation for depreciation

404. This paragraph makes general provision about compensation for depreciation and provides that the rules in section 5 of the Land Compensation Act 1961 (rules for assessing compensation) apply for the purpose of assessing compensation for depreciation that is payable under this Schedule. This paragraph also makes various specific provisions about compensation for depreciation where an interest in land is subject to a mortgage.

Paragraph 10 – Determination of claims for compensation

405. This paragraph requires any question of disputed compensation to be referred to and determined by the Upper Tribunal.

Schedule 3 – Consequential amendments and repeals

406. Schedule 3 is introduced by section 145 and sets out consequential amendments and repeals.

RECORD OF PROCEEDINGS IN SENEDD CYMRU

407. The following table sets out the dates for each stage of the Act's passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:

https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=41502

Stage	**Date**
Introduced	12 June 2023
Stage 1 - Debate	5 December 2023
Stage 2 Scrutiny Committee – consideration of amendments	22 February 2024
Stage 3 Plenary - consideration of amendments	19 March 2024
Stage 4 Approved by the Senedd	16 April 2024
Royal Assent	3 June 2024