

Carl Sargeant AC / AM  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: M-P-CS-0043-15

Alun Ffred Jones AM  
Chair  
Environment and Sustainability Committee

 November 2015

Dear Alun Ffred,

Further to the email from the Committee Clerk on 28 October, I am pleased to provide a response – at Annex 1 - to the action points raised during my appearance before the Committee on 14 October.

I trust that I have addressed the Committee's queries in full.

Yours sincerely



**Carl Sargeant AC / AM**  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Correspondence: Carl.Sargeant@wales.gsi.gov.uk  
*Printed on 100% recycled paper*

*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Annex 1

### **The rationale behind the 350MW ceiling for the further devolution of energy consenting powers.**

The Committee inquired about the rationale for the 350 mega watt (MW) ceiling contained within the Draft Wales Bill, (clause 17). This threshold is derived from the Commission on Devolution in Wales (Silk 2 Report), published in March 2014.  
<http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>

Chapter 8 deals with Natural Resources, setting out the evidence received by the Commission, their assessment and recommendations. Paragraphs 8.2.19 and 8.2.20 outline the Commission's conclusions on the threshold.

As for the necessary primary legislation, clause 17 of the Draft Wales Bill issued last month, seeks to devolve to Wales the responsibility for energy generating development consents for projects up to 350MW onshore and offshore in Welsh territorial waters. The combined effect of the provisions in the Bill is to dis-apply the Secretary of State for Energy and Climate Change's power under the 2008 Planning Act to grant a development consent order (DCO) in relation to electricity generating stations up to 350MW. This would leave consenting for electricity generating stations to be determined in accordance with S36 of the Electricity Act 1989; however, subsections (6)-(8) of the Draft Wales Bill would remove the requirements of the Electricity Act in relation to electricity generating stations up to 350MW, which in effect transfers such projects into the Town and Country Planning system in Wales if they are onshore, (ie above low water mark).

Silk 2 also recommended that responsibility for granting consent for associated development for energy generating projects should be aligned with the responsibility for granting the consent for the main project; paragraph 8.2.25 refers. Planning consents for energy projects over 50MW are currently determined via a DCO from the Secretary of State under the Nationally Significant Infrastructure Projects (NSIP) regime established by the 2008 Planning Act. However, large energy projects are also likely to require consent for development which is related to the principal project and is necessary for the project to proceed. In England the Secretary of State can currently incorporate a wide range of such related consents within the DCO. In Wales, however, the Secretary of State currently has limited powers to grant these consents, restricted to surface works, boreholes or pipes ancillary to underground gas storage. Clause 17 of the Draft Wales Bill would devolve consents for energy projects up to 350MW to Wales, while under clause 18 the Secretary of State would be able to consent not only the principal project over 350 MW but also any associated development consents required in Wales.

The Committee may also wish to note that the Silk 2 recommendations and Draft Wales Bill clauses are silent on energy projects other than generating stations, such as grid transmission lines. As drafted the combined result would be to add to the complexity of the current regime in Wales. For example, an NSIP power station over 350 MW would be consented via a DCO which included consent for associated development. However, an NSIP grid transmission line would not be able to include associated developments, such as planning permission for a sub-station, within the DCO. In this case planning permission for

the sub-station would need to be determined by either the Welsh Ministers as part of a Development of National Significance, or on call-in, or by the relevant local planning authority.

An additional change to the energy consenting regime was announced by the UK Government on 18 June, to remove the 50 MW threshold and transfer decisions on all applications for onshore wind generation to the town and country planning regime, to be taken by local planning authorities in England and within the planning regime set by Welsh Ministers in Wales. This announcement is reflected in clause 59 of the Energy Bill, amending s36 of the Electricity Act 1989; two related statutory instruments are expected to give effect to this.

The Silk Commission aimed to balance accountability, clarity, coherence, subsidiarity and effectiveness. However it is questionable if clauses 17 and 18 within the Draft Wales Bill deliver the balance sought. There is a risk of making the existing fragmented consenting system even more fragmented.

### **The legislative framework for marine planning**

Welsh Government made a clear commitment to sustainable development in the Government of Wales Act. This is strengthened by the Well-being of the Future Generations (Wales) Act. There is clear commitment to sustainability also in the legislation relating to marine planning - the Marine and Coastal Access Act 2009 in the UK and the EU Maritime Spatial Planning Directive 89/2014.

The need to manage activity in our seas, to secure meaningful engagement, integration and long term environmental and economic sustainability is central throughout the legislative framework. Welsh Government is working to achieve co-ordination across Departments and through key forthcoming legislation relating to the Environment, to terrestrial Planning and to the management of Natural Resources.

### **The Marine and Coastal Access Act 2009 (MCAA)**

This has been the framework for marine planning in the UK from 2009. It provides for a Marine Policy Statement to be introduced and sets Welsh Ministers as the marine planning authority for Wales responsible for preparing a marine plan for both the inshore and offshore regions.

The MCAA requires the Welsh Ministers to seek to ensure that a marine plan is in place for a marine planning authority area (for Wales this means the inshore and offshore areas) when a Marine Policy Statement is in effect.

The **Marine Policy Statement (MPS)** was jointly adopted by all UK administrations and published in 2011.

<https://www.gov.uk/government/publications/uk-marine-policy-statement>. As the policy framework for marine plans, it established consistency in marine planning across the UK marine area. It set the direction for marine licensing and other relevant authorisation systems.

It provides the high level policy context and outlines the aims of marine planning as being to:

- achieve integration between different objectives;
- recognise that the demand for use of our seas and that the resulting pressures on them will continue to increase;
- manage competing demands on the marine area, taking an ecosystem-based approach;
- enable the co-existence of compatible activities wherever possible; and
- integrate with terrestrial planning.

The objectives and the policies identified in the draft Initial Welsh National Marine Plan have been developed in compliance with the MPS and address the key activities that happen in the marine environment.

**The EU Framework Directive for Maritime Spatial Planning 89/2014** [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.257.01.0135.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.257.01.0135.01.ENG) provides a framework for maritime spatial-planning (or marine planning) EU wide which aims to promote the sustainable development of marine areas and the sustainable use of marine resources. The Directive requires that Member States:

- take into account land-sea interactions
- take into account environmental, economic and social aspects, as well as safety aspects
- aim to promote coherence between maritime spatial planning and the resulting plan(s) and other processes, such as integrated coastal management or equivalent formal or informal practices
- ensure the involvement of stakeholders
- organise the use of the best available data
- ensure trans-boundary cooperation
- promote cooperation with third countries

The Directive requires Member States to develop a national marine plan no later than 31 March 2021 and to review it at least every ten years.

We anticipate that we will be ready to introduce a plan in Wales before 2021. The draft Initial Welsh National Marine Plan has been prepared in accordance with, and gives consideration to, the Directive (2014/89/EU) using the powers contained within MCAA.

The Directive refers to the need to comply with other relevant Directives, among them the marine strategy framework.

**The European Marine Strategy Framework Directive 2008/56/EC.** The overarching aim is for Member States to put in place measures to achieve and maintain Good Environmental Status (GES) in European waters by 2020. The Welsh Government and other UK administrations are committed to developing an UK Marine Strategy to implement the Directive. Similar strategies are being developed across the European Union to collectively look after our seas for future generations.

## **Development of the first Welsh National Marine Plan.**

The first Welsh National Marine Plan for Wales is being developed from first principles. It will be the first time we are adopting a planned approach to activity happening in Welsh waters and it is important to ensure that it is robust.

The marine plan for Wales is progressing towards introduction with a draft being shared for comment this autumn.

The plan will take a 20 year outlook initially and will cover the Welsh inshore and offshore waters. It will clarify marine objectives and priorities, providing direction towards consistent, evidence based decisions for those making choices and taking decisions about activities taking place in our marine area. The Welsh National Marine Plan will support the delivery of Welsh Government policy on the economy, the environment, climate change and other key policies.

### **Engagement**

There is continuing and considerable engagement of development of the marine plan. There has been formal consultation at key stages, on the vision, structure and evidence, as well as ongoing less formal liaison. A network of stakeholders has been developed and advisory groups have been established. There are many contacts with representatives of organisations including the Marine Management Organisation, the Crown Estates, Wales Environment Link, the Pembrokeshire Coastal Forum, the Welsh Fishing Association, the Welsh Yachting Association, the Aggregates industry, the Severn Estuary Partnership and more. There is an engagement exercise on an initial draft of the plan taking place over the Autumn with public sessions being held during November and meetings with interested parties through to February next year.

### **Integration**

Officials are working with colleagues across local and central government in Wales and the UK, to ensure that lessons are learned from plan development elsewhere and that best practice is shared. Officials are studying the plans of other administrations and there is liaison building where such plans will cover areas which border our waters, such as in the estuarine regions of the Dee and the Severn.

Close working with policy officials in Welsh Government and across the UK has informed the draft to this point, with input from a range of key people with the necessary expertise. This has included establishing groups of senior officials to ensure coherence across departments, on policy areas such as natural resources, economic growth, and tourism. This work will continue.

### **The evidence supporting the Plan**

A Strategic Scoping Exercise to collate the best available evidence on marine planning was carried out in 2014. It was shared openly for comment during its development and revised in the light of comments received. It was published as the Wales Marine Evidence Report recently.

The Marine Evidence Portal for Wales, presenting various data sets linked to an interactive map of Wales has been published and shared electronically 2014-15. Other evidence is published on the marine planning pages of the Welsh Government website as it emerges. <http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-planning/?lang=en>

**The current, initial draft of the first Welsh National Marine Plan.**

The draft Plan presents a **detailed introduction** which sets the context of the plan. There are then **general, overarching policies** that have relevance to many activities, such as the need to act in such a way that ensures sustainability, both economic and environmental. This is supported by **policies that are relevant for specific sectors**. These include; Aquaculture; Aggregates, Defence; Dredging and disposal, Energy, Fisheries; Ports and Shipping, Subsea cabling, Surface water runoff and wastewater management, Tourism and Recreation. Direction is provided on natural resource management.

Welsh Government is committed to working with all those with an interest to develop the marine plan. We will continue to refine and develop our communication networks and approaches as the plan develops towards introduction, and when it becomes operational.

**Indicative timetable for developing the Plan**

This indicative timetable was published recently on the marine planning pages of the internet (see link below) as part of the revised Statement of Public Participation.

<p>1. Informal and widespread discussions on the draft WNMP and revision of the Plan in light of points raised</p> <p>2. Formal Consultation on the revised draft of the WNMP and the Sustainability Appraisal</p>	<p>Late Autumn 2015 , early 2016</p> <p>2016</p>
<p>3. Formal adoption and introduction of the WNMP and associated documents</p>	<p>2016 /2017</p>
<p>4. Implement and evaluate the WNMP</p>	<p>2017 onwards</p>

Documents and information will be published on the Welsh Government website as appropriate.

<http://gov.wales/topics/environmentcountryside/marineandfisheries/marine-planning/?lang=en>

## **The Criteria for Assessing Good Ecological Status' (GES)**

Good ecological status, together with good chemical status, are the requirements to be met by all designated water bodies under the EU Water Framework Directive (the Directive).

**Ecological status** describes the degree to which human uses of the water environment have altered the structure and functioning of aquatic plant and animal communities. The Ecological classification system has five classes, from high to bad, and uses biological, physico-chemical, hydromorphological and chemical assessments of status.

Biological assessment uses numeric measures of communities of plants and animals (e.g. fish and rooted plants). Physico-chemical assessment looks at elements such as temperature and the level of nutrients, which support the biology. The hydromorphological assessment looks at water flow and physical habitat. The Directive only gives definitions for three classes for these quality elements (high, good and moderate status) but for the purposes of planning improvements and assessing deterioration, we need numeric values equivalent to all five biological classes 'High' ecological status represents an ecology relatively undisturbed by man. 'Good' ecological status means that human activities have had only slight impacts on the ecological characteristics of aquatic plants and animal communities.

**Chemical status** describes whether the water contains safe levels of certain toxic chemicals that have been identified as of particular concern across Europe because of their toxicity, persistence and ability to accumulate in the bodies of plants or animals. These include the chemicals known as 'priority substances' and include a sub-set called 'priority hazardous substances' as well as other toxic substances identified under the Dangerous Substances Directive. The chemical classification is simple: water which contains too high a concentration of the listed pollutants cannot be classified as 'good'.

These pollutant standards are set by the UK according to the procedure outlined in Annex V of the WFD.

The overall ecological status of a water body is determined by whichever of these assessments is the poorer. So, a water body might pass 'good status' for chemical and physico-chemical assessments, but be classed as 'moderate status' for the biological assessment. In this case it would be classed overall as 'moderate ecological status'.

Good ecological status, together with good chemical status, are the requirements to be met by all designated water bodies under the EU Water Framework Directive (the Directive).

Ecological status describes the degree to which human uses of the water environment have altered the structure and functioning of aquatic plant and animal communities. The Ecological classification system has five classes, from high to bad, and uses biological, physico-chemical, hydromorphological and chemical assessments of status.

## **Comparison of the 42% GES figure for Water Bodies in Wales with UK and Europe**

It is very difficult to give an accurate answer to this question as every country measures and reports on GES slightly differently. Within the UK, a number of water bodies are cross border so it is not possible to disaggregate the figures to give individual countries' data. This data however should be available when the final river basin management plans are published at the end of this year. The same applies to other EU countries.

## **Progress in implementing the seven recommendations from the Natural Resources Wales Coastal Review that will not be completed during this financial year, including a timeline for completing these recommendations.**

I am pleased with the ongoing work of NRW to progress the recommendations set out within the NRW Coastal Delivery Plan. Work on all 47 recommendations has commenced and I am pleased to say that 21 were recorded as complete by the end of October 2015; this includes a number of recommendations where Welsh Government are leading. The proposed completion of 42 Recommendations within this financial year presents a very positive picture.

Within the delivery plan we have already acknowledged that a number of the recommendations were to be ongoing and not for completion this financial year. My officials will continue to work alongside NRW to progress work on these. There are also two recommendations relating to forecasting, on which we will always seek improvement as is appropriate. It is important to note that flood forecasting has already improved since 2014.

I now consider that only 5 recommendations will still be ongoing at the end of the financial year. These were highlighted within the delivery plan as being ongoing work. Those which will be ongoing in March 2016 will be:

Recommendation 3 – *work to assess the joint probability of the 2013/14 winter storms.* This recommendation is defined as ongoing in the Delivery Plan. Officials met with risk management authorities on 3 November where consultants presented on how this probability work was progressing in relation to the initial flooding in Rhyl.

Recommendation 5 - *review the guidance used for assessment and design of coastal standard or service against flooding.* This is ongoing work and is connected to the consideration of joint probability analysis (recommendation 3) being pursued via the current Research and Development project.

Recommendation 6 – *identify and implement opportunities to deliver further improvements to longer range forecasts.* NRW has taken a significant step forward since the 2013/14 storms in that they are now able to forecast coastal flooding up to 5 days ahead, giving more lead time to prepare. This recommendation is defined as continuous improvement in nature as we will always want to improve our forecasting.

Recommendation 8 – *progress opportunities to deliver improvements to the accuracy of the forecasting service.* As with recommendation 6, this recommendation is defined as continuous improvement in nature.



Recommendation 41 – *supporting coastal adaptation at a local level through development of a toolkit.* We recognise the continued progress being made by the Fairbourne Moving Forward project and the recent appointment of a researcher to help inform future toolkit development. This recommendation is defined as long term/ongoing within the Delivery Plan.

