

**Explanatory Memorandum to:**

- 1) The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019**
- 2) The Developments of National Significance (Wales) (Amendment) Regulations 2019**
- 3) The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019**
- 4) The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019**

The Explanatory Memorandum has been prepared by Planning Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- 1) The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019;
- 2) The Developments of National Significance (Wales) (Amendment) Regulations 2019;
- 3) The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019; and
- 4) The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019

I am satisfied the benefits justify the likely costs.

Minister for Housing and Local Government  
21 January 2019

## **PART 1**

### **1. Description**

- 1.1 Sections 39 and 42 of the Wales Act 2017, among other things, prospectively devolve further responsibility to the Welsh Ministers for the consenting of onshore energy projects (excluding wind, responsibility for which is already devolved) up to and including 350MW and overhead electric lines up to and including 132KV where they are associated with a Welsh devolved generating station. These provisions will be commenced on 1 April 2019.
- 1.2 The legal effect of relevant provisions in the Wales Act 2017 is to place the consenting of this onshore infrastructure into the Town and Country Planning Act 1990 (“TCPA”). However, this creates a number of anomalies which require correction. The statutory instruments make consequential changes to procedures to enable the Welsh Ministers to determine such applications in the most appropriate way, as well as making some other minor procedural changes.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

- 2.1 The Explanatory Memorandum (including Regulatory Impact Assessment) covers four separate statutory instruments: one subject to the affirmative procedure and three which are subject to the negative procedure and which are scheduled to be laid conditional on the approval of the affirmative procedure statutory instrument by the National Assembly for Wales.

| <b>Statutory Instrument</b>  | <b>Procedure</b> |
|--|------------------|
| The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019 | Affirmative      |
| The Developments of National Significance (Wales) (Amendment) Regulations 2019   | Negative         |
| The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019   | Negative         |
| The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019                                       | Negative         |

- 2.2 All of the above statutory instruments are reliant on each other and are interlinked through various references. It would not be possible to interpret the regulatory impacts made by each statutory instrument in isolation without explaining the wider legislative context. Hence, a composite Explanatory Memorandum has been prepared to describe these statutory instruments.
- 2.3 The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019 are made under section 2(2) of the European Communities Act 1972. There is a choice of procedure in relation to instruments made under section 2(2) of that Act. The Regulations are also made under section 71A of the Town and Country Planning Act 1990 (TCPA) which is subject to the negative procedure. There were no factors indicating the affirmative procedure should be used for these Regulations.

### **3. Legislative Background**

#### The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019

- 3.1 Sections 39 and 42 of the Wales Act 2017 (“the 2017 Act”), among other things, make changes to the consenting arrangements for generating stations and overhead electric lines in Wales. In broad terms these sections devolve, to the Welsh Ministers, the function of granting consent in respect of the following to the Welsh Ministers (“newly devolved projects”):
- (a) The consenting of generating stations both on and offshore with a capacity of 350MW or less. This excludes onshore wind, for which consenting for all such applications is already devolved to the Welsh Ministers; and
  - (b) The consenting of overhead lines with a nominal voltage of 132KV or less, where they are associated with a Welsh devolved generating station.
- 3.2 Part 3 of Schedule 6 to the 2017 Act also makes a number of minor and consequential amendments. The Wales Act 2017 (Commencement No.4) Regulations 2017 fully commences Sections 39, 42 and Part 3 of Schedule 6 on 1 April 2019. Hence, legislation relating to the newly devolved projects is included in the Regulations.
- 3.3 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 62D and 303 of the TCPA and powers conferred on the Secretary of State by section 333 of the TCPA, which are now exercisable by the Welsh Ministers.

- 3.4 Section 62D of the TCPA makes provision for applications for Development of National Significance (“DNS”) to be made directly to the Welsh Ministers. Section 62D(3) states a development is DNS where it meets criteria specified in Regulations made by the Welsh Ministers for the purpose of section 62D.
- 3.5 Section 303 of the TCPA enables the Welsh Ministers to make Regulations in respect of fees for planning applications and deemed planning applications. This includes DNS applications.

The Developments of National Significance (Wales) (Amendment) Regulations 2019

- 3.6 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 321B and 323A and Paragraph 1(2) of Schedule 4D of the TCPA.
- 3.7 Of the provisions most relevant to these Regulations, paragraph 1(2) of Schedule 4D of the TCPA enables specified functions of the Welsh Ministers to be exercised by an appointed person.
- 3.9 Section 323A of the TCPA enables the Welsh Ministers, by Regulations, to prescribe the procedure to be followed in connection with an inquiry or hearing held by or on behalf of the Welsh Ministers by virtue of any provisions under the TCPA and any proceedings considered on the basis of representations in writing.

The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019

- 3.10 This Order is made in exercise of the powers conferred on the Welsh Ministers by sections 59, 61Z, 62R and 333 of the TCPA and powers conferred on the Secretary of State by section 62 of the TCPA, which are now exercisable by the Welsh Ministers.
- 3.11 Of the provisions most relevant to this Order, Section 61Z(5) of the TCPA enables the Welsh Ministers to prescribe, by Order, the specified persons who must be consulted about a proposed planning application.
- 3.12 Section 62 of the TCPA enables the Welsh Ministers to make provision as to the form, content, manner and particulars of a planning application, including pre-application consultation reports. This applies to DNS by virtue of the Developments of National Significance (Application of Enactments) (Wales) Order 2016.

- 3.13 Section 62R of the TCPA enables the Welsh Ministers, by Order, to make provision regulating a manner in which an application directly to the Welsh Ministers is dealt with by them.

The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019

- 3.14 These Regulations are made in exercise of the powers provided by section 2(2) of the European Communities Act 1972 and section 71A of the TCPA.
- 3.15 The Welsh Ministers were designated by The European Communities (Designation) (No.3) Order 2007 (S.I. 2007/1679) for the purposes of section 2(2) of the 1972 Act, to make regulations 'in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, insofar as it concerns town and country planning'.
- 3.16 The functions under section 71A of the TCPA were transferred to the National Assembly for Wales by S.I. 1999/672. Those functions were subsequently transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 1998.

**4. Purpose and intended effect of the legislation**

The Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019

*Changes to the specified criteria - Onshore generating stations*

- 4.1 As a consequence of the changes made by the Wales Act 2017 (set out in paragraphs 3.1-3.2), the consenting of newly devolved projects will fall within Part 3 of the TCPA. The default position is the consenting of newly devolved projects will require planning permission from the Local Planning Authority ("LPA") under section 58 of the TCPA. This creates a perverse situation whereby already devolved smaller scale projects, such as generating stations between 10MW and 50MW are consented by the Welsh Ministers through the DNS process, whereby larger scale generating stations between 50MW and 350MW are to be consented at the local level by LPAs.
- 4.2 The evidence which underlies the specified criteria for DNS indicates the performance of LPAs in achieving timely decisions on large scale energy projects is not satisfactory. It would be illogical for smaller projects to be dealt with at the national level, with larger generating projects consented at the

local level. The purpose of this legislation is to alter this anomaly and ensure a logical and proportionate consenting procedure is in place.

- 4.3 In the Government response<sup>1</sup> to the consultation on DNS in 2015, it was stated the medium term objective would be to capture any new projects above the existing devolved upper limit as DNS. This view has not changed in the light of the devolution of generating stations of between 50MW and 350MW. The effect of the legislation is to extend the specified criteria for DNS to also include these projects.

*Changes to the specified criteria - Overhead electric lines*

- 4.4 Changes are proposed to the DNS specified criteria which relate to devolved overhead electric lines. Consents for overhead electric lines are currently issued under the Electricity Act 1989 (up to 132KV) or the Planning Act 2008 (132KV and above). These are both consents issued by the Secretary of State. Following commencement of the relevant parts of the Wales Act 2017, the consenting overhead electric lines up to and including 132KV which are associated with a devolved generating station will be placed within the TCPA for determination by LPAs by default.
- 4.5 Being determined by the LPA brings some concerns. Being linear projects, overhead electric lines tend to pass a number of LPAs. The requirement to gain separate consents from a number of LPAs may delay the development of such infrastructure in Wales.
- 4.6 Furthermore, overhead electric lines are necessary for the operational effectiveness and resilience of the electricity transmission and distribution network. Each link of the network, no matter what the scale, is critical to the network as a whole, ensuring power can be distributed sustainably and economically to customers. Accordingly, the purpose of this legislation is to address the need for such infrastructure to be consented at the national level.
- 4.7 The effect of this legislation is to place the consenting of overhead electric lines into the DNS process. While this may lead to the consenting of such lines taking longer than they do at present, the DNS process provides the only appropriate framework for decision at the national level in the TCPA, with appropriate consultation and scrutiny arrangements.

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<sup>1</sup> Welsh Government, Developments of National Significance – Summary of responses and Government response, November 2015

#### *Changes to the specified criteria - Electricity storage*

- 4.8 A further purpose of these Regulations relates to energy storage. It is acknowledged there are emerging storage technologies which will increase clean generation and energy efficiency in Wales and help the transition to a low carbon economy.
- 4.9 Small scale storage projects of between 10MW and 50MW must seek planning consent under the DNS process. However, such projects typically have minor impacts and occupy minimal land. No storage projects have been consented through this process as the cost and time taken for decisions is seen as prohibitive to storage operators. Prior to the coming into force of the DNS process in 2016, the performance in consenting such projects appeared to be reasonable at the local level.
- 4.10 The purpose of this legislation is to remove consenting barriers and to reflect the physical scale and impacts of storage technologies being developed. The effect of the legislation is to remove storage projects from the current DNS process, for decision at a local level. This is considered to be a more proportionate way to determine such projects. This proposal will not include pumped hydroelectric storage schemes, which on the basis of prior projects, continue to have significant environmental effects.

#### *Changes to fees for applications – Overhead electric lines*

- 4.11 Paragraphs 4.16 to 4.19 below detail changes made by the Developments of National Significance (Wales) (Amendment) Regulations 2019 relating to the procedure for applications for overhead electric lines. A consequential change is made in the Developments of National Significance (Specified Criteria, Fees and Fees for Deemed Applications) (Wales) (Amendment) Regulations 2019 which removes the requirement to pay a fee to the Welsh Ministers for determining an application, where the application is not determined by them. This is in accordance with public finance principles.

#### *Changes to fees for deemed applications – Appeals under section 177(1) of the TCPA*

- 4.12 An anomaly has arisen where an appeal against an enforcement notice could potentially be brought in relation to a development which is ascribed DNS status, on the ground planning permission should have been granted for the development (a Ground (a) appeal under section 174(2)(a) of the TCPA). Section 177(1) of the TCPA provides the Welsh Ministers, on an appeal against an enforcement notice, may grant planning permission. Section 177(5) of the TCPA requires, where such an appeal is brought, the appellant

shall be deemed to have made an application for planning permission in respect of the matters in the enforcement notice as constituting a breach of planning control.

- 4.13 Where such an appeal is brought, legislation does not allow a fee to be allocated to the LPA where it concerns an application which would otherwise be a DNS. Current legislation provides a fee is payable for deemed applications if a fee would have been payable to the LPA on making an application for planning permission. However, as developments which qualify as DNS are made to the Welsh Ministers, no fee is payable to the LPA.
- 4.14 This situation is considered to be unfair, and the purpose of the legislation is to correct this anomaly. The LPA will ultimately bear the cost of issuing the enforcement notice, participating in an appeal and, if the appeal is unsuccessful, will also bear the cost of enforcing the planning permission. However, they will not be subsidised for this additional work. Were the application is a DNS application made directly to the Welsh Ministers, the LPA would receive a fee for participating in the application process. Accordingly, the Regulations make changes to address this and provide for a fee to be payable in these circumstances.

The Developments of National Significance (Wales) (Amendment) Regulations 2019

- 4.16 Paragraphs 4.4 – 4.7 above relates to the addition of devolved overhead electric lines to the specified criteria for DNS. The amendments made by the Developments of National Significance (Wales) (Amendment) Regulations 2019 have the purpose of expediting the process for such applications.
- 4.17 The development industry sees the current consenting process under the Electricity Act 1989 as proportionate and evidence suggests timely decisions are issued routinely under this arrangement. Decisions are typically made within 4-6 weeks by the Secretary of State. As of 1 April 2019, the Welsh Ministers will no longer have access to this regime where it concerns devolved overhead electric lines.
- 4.18 The DNS process has a maximum timeframe of 36 weeks, which can be significantly longer than the Secretary of State's decision period. At present, there is a requirement for all DNS projects to be determined by the Welsh Ministers, rather than an Inspector appointed to examine the application. This can make up 12 weeks of the 36 week determination period for a DNS project.



- 4.19 The effect of the legislation will be to remove this requirement where it concerns overhead electric lines to produce timelier decisions. There are no other logical areas in the DNS process where time savings can be achieved.

The Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019

- 4.20 Paragraphs 4.4 – 4.7 above relate to the addition of devolved overhead electric lines to the specified criteria for DNS. Amendments made by the Developments of National Significance (Procedure) (Wales) (Amendment) Order 2019 are consequential and add further validation requirements where a DNS application concerns a devolved overhead electric line. The effect of this change is to retain the status quo where it concerns the validation requirements for such applications and to reflect validation requirements for existing overhead electric line applications contained at Paragraph 1(2) of Schedule 8 of the Electricity Act 1989.
- 4.21 Additionally, the Order makes amendments to the list of bodies which must be consulted before the grant of planning permission for DNS. The effect of this change is to bring up to date the circumstances in which statutory bodies are consulted during the DNS application process with the circumstances specified in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended in this respect in 2016). This will ensure consistency with other planning applications.

The Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019

- 4.22 Directive 2014/52/EU (“the 2014 Directive”) requires the authority granting development consent for a particular project to make its decision in full knowledge of any likely significant effects on the environment. Before sections 39 to 42 of the Wales Act 2017 come into force, overhead electric lines are consented either under section 37 of the Electricity Act 1989 or the Planning Act 2008. The transposition of the 2014 Directive in relation to these projects is made by the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (“the Electricity Works EIA Regulations”).
- 4.23 Following the coming into force of sections 39 to 42 of the Wales Act 2017, the consenting of devolved overhead electric lines will fall within the Town and Country Planning Act 1990. Accordingly the Electricity Works EIA Regulations will cease to apply.

- 4.24 The purpose of these Regulations is to transpose the 2014 Directive as it will relate to devolved overhead electric lines in Wales from 1 April 2019. These Regulations will add the installation of devolved overhead electric lines to Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. The effect of this is such projects will require to be screened for the requirement for an Environmental Impact Assessment in advance of a planning application.
- 4.25 The Regulations also make a consequential change to transitional provisions to clarify alignment with the 2014 Directive.

## **5. Consultation**

- 5.1 A 12 week consultation ran from 30 April to 23 July 2018 on changes to the consenting of infrastructure in Wales. The consultation was drawn to the attention of a wide range of stakeholders including LPAs, generating station operators and their representatives, businesses, planning consultants, interest groups and other public sector agencies. A total of 47 responses were received.
- 5.2 Of the questions relevant to these statutory instruments, there was broad agreement with the proposals. On the whole, while consultees are dismayed with the placing of overhead electric lines into the TCPA by the Wales Act 2017, there was general agreement the approach as set out in these statutory instruments was a pragmatic one. A number of responses were submitted asking for further guidance to accompany the DNS process. In response, existing guidance will be strengthened as a result.
- 5.3 A summary of the consultation responses is available at:  
<https://beta.gov.wales/changes-approval-infrastructure-development>.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 6. Regulatory Impact Assessment

6.1 This Regulatory Impact Assessment assesses the cost and impacts of making changes to the Developments of National Significance (“DNS”) specified criteria, as well as the consequential amendments to associated Regulations and Orders. It is divided into three parts and addresses three amendments to the DNS specified criteria. Those relate to:

- (a) The consenting of generating stations between 50MW and 350MW;
- (b) The consenting of devolved overhead electric lines up to and including 132KV; and
- (c) The consenting of energy storage.

#### **Consenting of applications for generating stations between 50MW – 350MW onshore**

6.2 Two options have been considered:

- **Option 1** – Do nothing. Planning applications for consenting generating stations between 50MW – 350MW will be determined by the relevant LPA(s) (with the exception of onshore wind)
- **Option 2** – The maximum thresholds for Developments of National Significance (“DNS”) for generating stations (with the exception of onshore wind) are extended from 50MW to 350MW to ensure all applications of between 10MW – 350MW are consented via the DNS regime and determined by the Welsh Ministers. This is the preferred option.

**Option 1 - Do nothing. Planning applications for consenting generating stations between 50MW – 350MW will be determined by the relevant LPA(s) (with the exception of onshore wind).**

#### **Description**

6.3 The Wales Act 2017 devolves further responsibility for the consenting of energy and infrastructure projects to Wales, including extending the threshold of onshore energy generating projects to 350MW. This does not include applications for onshore wind, which are all consented in Wales, regardless of the output.

- 6.4 This option would retain the default position set out in the Wales Act 2017, whereby applications of between 10MW – 50MW would be consented via the DNS process and applications up to 10MW and those between 50MW – 350MW would be consented at the local level by the relevant LPA(s).

## **Costs**

### Welsh Government

- 6.5 This option would see no additional costs to the Welsh Ministers as the additional consenting powers for determining applications of between 50MW – 350MW would be undertaken by the relevant LPA(s) as the prescribed consenting authority.

### Local Planning Authority

- 6.6 In the past 8 years, since the coming into force of the Planning Act 2008, there have been a total of 9 applications submitted for an energy generating station of between 50MW – 350MW within Wales, which is an average of 1.1 applications per annum.
- 6.7 As this option would require decisions on planning applications to be made at the local level, these applications would be subject to fees prescribed in the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (“the 2015 Regulations”) and be calculated by site area, rather than output. Evidence shows a significant variation between the site area of these applications, which range from 4 hectares to 1,581 hectares. Based on a fee of £190 per 0.1 hectares<sup>2</sup> (up to a maximum fee of £287,500), this results in fees of between £7,600 - £287,500 for the 9 applications.
- 6.8 The average site area of applications between 50MW and 350MW is 542 hectares, which would result in an average fee of £287,500. Based on an average of 1.1 applications per annum, LPAs would make fee revenue of £316,250, which would be offset by the cost of determining the application.
- 6.9 Furthermore, applicants may also wish to pursue pre-application discussions with the relevant LPA(s) prior to the submission of their application. This will result in a cost to LPAs for providing these services; however, this service is discretionary and costs won't apply in all cases. Thus, the impact has not been assessed.

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<sup>2</sup> Schedule 1 – The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015

### Development Industry

- 6.10 Application fees would be subject to the 2015 Regulations which are required to be paid by developers to LPAs to cover the costs of examining and determining these applications.
- 6.11 Based on the average number of applications submitted in Wales which fall within this threshold being 1.1 and the likely fee per application (expected to be the maximum £287,500 based on the average area of a development site) developers can expect to incur costs of approximately £316,250 per annum.
- 6.12 Furthermore, developers bear the cost of preparing their proposed scheme and using the planning system to obtain planning permission. Applications usually require the payment of a fee (or fees) to the relevant consenting authority.
- 6.13 Although developer costs will vary according to the size of a development, it is estimated the cost of preparing an application is £137,600 and £151,500 per year<sup>3</sup>.
- 6.14 The total estimated annual costs to the development industry will be £467,750.

### The Community

- 6.15 The community and interested parties will have the ability to review and comment on proposed schemes submitted to LPAs. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.

### **Benefits**

#### Welsh Ministers

- 6.16 There are no identifiable benefits to the Welsh Government as although they would remain as the determining authority for applications relating to onshore generating stations of between 10MW – 50MW, it would be LPAs who would be responsible for determining similar applications of between 50MW – 350MW which would arguably be of greater national significance. This results in an illogical situation.

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<sup>3</sup> Developments of National Significance – Explanatory Memorandum and Regulatory Impact Assessment (2015) – Updated to 2017/18 costs.

### Local Planning Authorities

- 6.17 As the determining authority, LPAs will have greater influence on proposed developments in their area, rather than the Welsh Ministers at the national level determining such applications. However, LPAs may not possess the relevant expertise to determine applications of such a scale.

### Development Industry

- 6.18 There are no identifiable benefits to developers as evidence indicates LPA performance in determining larger scale energy projects in a timely manner is poor and therefore, applications may be subject to significant delays. Furthermore, such applications will not be subject to a statutory timeframe, providing less certainty for developers, while decision making may be subject to local politics.

### The Community

- 6.19 Community benefits will be negligible as they may contribute and participate in the planning process in the same way.

**Option 2 – The maximum thresholds for Developments of National Significance (“DNS”) for generating stations are extended from 50MW to 350MW to ensure all applications of between 10MW – 350MW are consented via the DNS regime and determined by the Welsh Ministers.**

### **Description**

- 6.20 To rectify a perverse situation whereby the Welsh Ministers would be the consenting authority for applications of 10MW – 50MW and LPAs would be the consenting authority for applications of 50MW – 350MW, this option proposes to increase the existing DNS thresholds from 50MW to 350MW. This would result in LPAs being the consenting authority for applications up to 10MW and the Welsh Ministers the consenting authority for applications of between 10MW – 350MW.

### **Costs**

### Welsh Government

- 6.21 This option would see a cost and revenue increase to the Welsh Ministers for dealing with additional applications of between 50MW – 350MW.

- 6.22 As discussed in Option 1, there will be a total of 1.1 applications per year between 50MW – 350MW. The cost of dealing with these applications via the DNS regime will vary on a case-by-case basis.
- 6.23 Although the DNS process has standard fees for many of the procedures included in dealing with an application (e.g. notification fee, initial fee, LIR costs and determination fee), the fees set for examination are based on a daily rate and vary between written representations and hearings / inquiries.
- 6.24 Furthermore, the DNS process provides for either one of, or any combination of the three examination procedures to ensure this process is proportionate. For example, an application may be examined solely by written representations, a hearing or an inquiry, or may be predominately examined by written representations, with hearings and / or inquiries reserved for specific topics.

| <b>Table 1 – Estimated minimum costs (excluding pre-application services) for each procedure</b> |                         |                |                |
|--|-------------------------|----------------|----------------|
| Procedure  | Written Representations | Hearing        | Inquiry        |
| Notification   | £580                    | £580           | £580           |
| Validation, Representations and Publicity, Determination of procedure                            | £15,350                 | £15,350        | £15,350        |
| Daily Costs <sup>4</sup>   | £10,400                 | £11,040        | £16,560        |
| Advertising (Actual)   | £0                      | £500           | £500           |
| Venue Hire (Actual)  | £0                      | £1,600         | £2,400         |
| Welsh Ministers  | £14,700                 | £14,700        | £14,700        |
| <b>TOTAL</b>   | <b>£41,030</b>          | <b>£43,700</b> | <b>£50,090</b> |

6.25 Based on the size and scale of potential applications within this threshold, we can assume the majority, if not, all, will be examined by the inquiry procedure. With approximately 1.1 applications submitted each year, this will result in a total cost to the Welsh Ministers of £55,100 per annum. However, these costs will be offset by the submission of relevant fees by developers, resulting in a cost-neutral option to the Welsh Ministers.

<sup>4</sup> Estimated days: Written Representations / Hearing = 12; Inquiry = 18. Daily Rate: Written Representations = £870; Hearing / Inquiry = £920



- 6.26 The fees for Option 2 are significantly lower as they are not based on a spatial threshold, and purely on the time taken to determine the application.

#### Local Planning Authority

- 6.27 This option will be cost neutral to LPAs, as they would not be required to examine and determine applications of between 50MW – 350MW. This will mean LPAs will not receive fee revenue, however, there will be no cost incurred in determining applications. LPAs will instead be required to complete an LIR, the £7,750 cost of which will be borne by developers.

#### Development Industry

- 6.28 This option will benefit developers by reducing their costs for submitting an application. This cost will be £55,100 per year, compared to the annual cost of £316,250 under the 2015 Regulations. The cost of preparing an application will remain the same as Option 1, which is £137,600 per application or an average of £151,500 per year<sup>5</sup>. The total estimated annual costs to the development industry will be £206,600.
- 6.29 In addition to application costs, developers are required to cover the costs of the production and submission of an LIR by the relevant LPA, which is £7,750 where the application is not for a variation. This will result in an additional cost of £8,525 per year, and a total of £215,125.
- 6.30 This will result in an overall cost saving for developers of £252,625.
- 6.31 Additional costs may be incurred by developers, should they seek pre-application advice from either the Welsh Ministers, relevant LPA or both. However, as seeking pre-application services is discretionary and not a mandatory requirement, we are unable to quantify the financial costs for these services

#### The Community

- 6.32 The community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning authorities. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.

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<sup>5</sup> Developments of National Significance – Explanatory Memorandum and Regulatory Impact Assessment (2015) – Uprated to 2017/18 costs.

- 6.33 There is also provision in DNS which enables community and town councils to submit a voluntary LIR. Where they consider it necessary to do so, community and town councils will require time to compile and submit such a report. However, members and volunteers of such councils are generally non-salaried; therefore, this impact is also not financially quantifiable.

## **Benefits**

### Welsh Government

- 6.34 As the consenting authority for applications between 50MW – 350MW, the Welsh Ministers will be able to determine those applications considered of greater national significance, rather than decisions being made at the local level. This will address the consenting issue where it would be illogical for smaller projects to be dealt with at the national level, with larger projects consented at the local level.

### Local Planning Authorities

- 6.35 By extending the DNS thresholds to capture larger scale projects for determination at the national, rather than local level, LPAs will have greater resource and less time restrictions to focus on their day-to-day role in administering the planning system within their locality.
- 6.36 However, LPAs will retain the ability to have an input in the merits of an application submitted within their locality by submitting an LIR and also encouraging applicants to engage in pre-application discussions.

### Development Industry

- 6.37 As well as greater consistency in the determination process, developers will also benefit from more timely decisions, as the current energy thresholds for DNS indicates the performance of LPAs in achieving timely decisions on large scale energy projects is not satisfactory.

### The Community

- 6.38 The community and interested parties are able to review and comment on proposed schemes in the same way as they would to LPAs.

## **Justification for two options**

- 6.39 The overall aim for large scale energy projects up to 350MW is to ensure consistency for developers, as well as proportionality. The proposed default

position would see the Welsh Ministers determining medium-scale applications for generating stations via the DNS regime and LPAs determining significantly larger projects.

- 6.40 Therefore, the only possible solution to remedy this is to either have all proposed projects up to 350MW determined via the DNS regime by the Welsh Ministers, or to continue an illogical default position,

### Summary and preferred option

- 6.41 The current proposed arrangements (set out in option 1) will result in a perverse situation whereby the Welsh Ministers will determine applications between 10MW – 50MW via the DNS regime (i.e. those of national significance) and applications up to 10MW and between 50MW – 350MW would be determined by LPAs via the Town and Country Planning regime. This offers developers no consistency. Furthermore, evidence which underlies the current energy thresholds for DNS indicates the performance of LPAs in achieving timely decisions on large scale energy projects is not satisfactory.
- 6.42 In order to improve consistency, extending the DNS threshold to capture projects up to 350MW will ensure only the Welsh Ministers are the relevant determining authority, rather than a combination of LPAs and the Welsh Ministers. Therefore, option 2 is the preferred option.

| <b>Table 2: Costs of Option 1 and 2</b> |                   |                   |
|---|-------------------|-------------------|
|   | Option 1          | Option 2          |
| Welsh Ministers                         | £0 (cost neutral) | £0 (cost neutral) |
| LPAs                                    | £0 (cost neutral) | £0 (cost neutral) |
| Development Industry                    | £467,750          | £215,125          |
| The Community                           | N/A               | N/A               |

## **Overhead electric lines (up to 132KV)**

6.43 Three options have been considered:

- **Option 1** – Do nothing. Planning applications for overhead electric lines (up to and including 132KV), where they are associated with a devolved generating station, are determined by the relevant LPA(s).
- **Option 2** – Amend thresholds and criteria for DNS to include overhead electric lines up to and including 132KV, where they are associated with a devolved generating station, to be determined by the Welsh Ministers. By default, altering this threshold will not remove any existing permitted development rights.
- **Option 3** - Amend thresholds and criteria for Developments of National Significance to include overhead electric lines up to 132KV, where they are associated with a devolved generating station, to be determined by an appointed person, namely a Planning Inspector. By default, altering this threshold will not remove any existing permitted development rights. This is the preferred option.

**Option 1 – Do nothing. Planning applications for overhead electric lines (up to and including 132KV), where they are associated with a devolved generating station, are determined by the relevant LPA(s).**

### **Description**

6.44 Consents to install overhead electric lines are currently issued under section 37 of the Electricity Act 1989 (up to and including 132KV) or the Planning Act 2008 (132KV and above). These are both consents issued by the Secretary of State. From 1 April 2019, the Wales Act 2017 places consenting for these electric lines into the Town and Country Planning Act 1990 (“TCPA”) for such projects to be determined by local planning authorities (“LPA”), by default, where they are associated with a devolved generating station.

### **Costs**

#### **Welsh Government**

6.45 There are no costs associated with the Welsh Government as the consenting of overhead electric lines would be the responsibility of the relevant LPA(s).

#### **Local Planning Authority**

- 6.46 As this option would see these applications being determined by the LPA, they would be subject to the relevant fees prescribed by this Act which are set out in Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (“the 2015 Regulations”). However, there are no specific fees set out in the relevant Schedule to the 2015 Regulations to apply to overhead electric lines; therefore, estimated costs to LPAs are based on Category 9(b) of Part 2 to Schedule 1 to the 2015 Regulations (the carrying out of any operations not coming within any of the above categories) which specifies a fee of £190 for each 0.1 hectare of a site area, subject to a maximum fee of £287,500.
- 6.47 Since 2010, BEIS have received approximately 600 applications for overhead electric lines in the Scottish Power Electricity Networks and Western Power Distribution areas under section 37 of the Electricity Act 1989. Those areas largely cover Wales, though also cover parts of England. BEIS or the Distribution providers do not maintain a list of whether those applications are in Wales, the nominal voltage of those lines, their length and information on whether those applications are associated with a devolved generating station on all occasions, although some sporadic information is available. Accordingly, the impact on these applications cannot be assessed.
- 6.48 While this is the case, information is available on applications submitted which have a nominal voltage of 132KV since 2010, which are determined under the Planning Act 2008. Two such applications have been received in this period, which is a total of 0.25 per year. The average line length and width of these applications are 23 km and 0.003 km wide, this is equivalent to 23,000 m in length and 3m wide which calculates to 69,000 sq. m. 69,000 sq. km translates to 6.9 hectares, therefore, the average application would cost LPAs £13,110 under the 2015 Regulations. This is an annual cost and revenue of £3,280 per year.

#### Development Industry

- 6.49 The cost to developers in application fees will be approximately £3,280 per year for applications of 132KV. No assessable information is available on the amount of applicable applications below this level. Developers also bear the cost of preparing a planning application. This cost will be the same under all Options.

#### The Community

- 6.50 The community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning

authorities. However, it is not possible to quantify an amount based on the time spent commenting on proposed schemes.

## **Benefits**

### Welsh Government

- 6.51 There are no identifiable benefits to the Welsh Ministers as it would be LPAs determining what are arguably projects of national significance. Ultimately, overhead electric lines are necessary for the operational effectiveness and resilience of the electricity transmission and distribution network. Each link of the network, no matter what the scale, is critical to the network as a whole, ensuring power can be distributed sustainably and economically to customers.

### Local Planning Authority

- 6.52 There are no identifiable benefits to LPAs as there will be significant financial and resource implications for having to both determine applications for overhead electric line and potentially liaising with neighbouring LPAs to ensure the appropriate permissions can be viewed as one project.

### Development Industry

- 6.53 Being consented at the local level means certain applications for overhead electric lines may pass through multiple LPAs. This will then require separate consents from each LPA, leading to potential delays. Furthermore, the timing of decisions would be uncertain as well as decisions on vital infrastructure being subject to local politics.

### The Community

- 6.54 With applications being determined at the local level, communities may respond and contribute to applications, where required.

**Option 2 – Amend thresholds and criteria for Developments of National Significance to include overhead electric lines up to and including 132KV, where they are associated with a devolved generating station, to be determined by the Welsh Ministers. By default, altering this threshold will not remove any existing permitted development rights.**

## **Description**

- 6.55 Rather than LPAs being the determining authority for overhead electric lines applications up to 132KV, this option would transfer this function into the DNS regime and instead, be determined by the Welsh Ministers.
- 6.56 This option would retain the requirement for all DNS projects to be determined by the Welsh Ministers, which can take up to 36 weeks.

## **Costs**

### Welsh Government

- 6.57 Applications for overhead electric lines up to and including 132KV (where they are associated with a devolved generating station) would be subject to fees prescribed in the Developments of National Significance (Fees) (Wales) Regulations 2016, set out in Table 1 above.
- 6.58 Of the known applicable applications submitted since 2010 for overhead electric lines, only one has currently been subject to public examination, by way of an event, which was undertaken by a combination of written representations and hearings. As applications for overhead electric lines are generally uncontroversial, we can assume this would be the likely form of examination procedure for similar applications.
- 6.59 In terms of costs, we can estimate this will be a total of between £41,030 and £43,700 per application. Based on an estimated 0.25 applications submitted per annum, this will result in a cost to the Welsh Ministers of between £10,260 and £10,925 which will be balanced by fee revenue.

### Local Planning Authorities

- 6.60 Transferring applications for overhead electric lines up to and including 132KV into the DNS regime will require LPAs to produce and submit a Local Impact Report (“LIR”) for each DNS application. The costs to produce an LIR on a new application is £7,750 per application. Based on an estimated average of 0.25 applications per annum, the total cost to LPAs would be £1,940 per year, which will be offset by fee revenue.

### Development Industry

- 6.61 As discussed in paragraphs Option 1, developers bear the cost of preparing their proposed scheme and using the planning system to obtain planning permission. Applications usually require the payment of a fee (or fees) to the relevant consenting authority. From the 0.25 applications per year, it is estimated the total fee, including LIR, will be between £12,200 and £12,865.

### The Community

- 6.62 The community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning authorities. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.
- 6.63 There is also provision in DNS which enables community and town councils to submit a voluntary LIR. Where they consider it necessary to do so, community and town councils will require time to compile and submit such a report. However, members and volunteers of such councils are generally non-salaried; therefore, this impact is also not financially quantifiable.

### **Benefits**

#### Welsh Government

- 6.64 As the consenting authority for applications relating to overhead electric lines up to and including 132KV, the Welsh Ministers will be able to determine those applications considered of greater national significance, rather than decisions being made by LPAs.

#### Local Planning Authorities

- 6.65 By extending the DNS thresholds to capture larger scale projects for determination at the national, rather than local level, LPAs will have greater resource and less time restrictions to focus on their day-to-day role in administering the planning system within their locality. However, LPAs will retain the ability to have an input in the merits of an application submitted within their locality by submitting an LIR and also encouraging applicants to engage in pre-application discussions.

#### Development Industry

- 6.66 Although developers would see an increase in costs and determination times when compared to option 1, they benefit from potentially only submitting one application for determination as applications for overhead electric lines may extend beyond one LPA boundary, which will then require separate applications for each part of the electric line falling within each LPA boundary leading to potential delays.

### The Community



- 6.67 Although applications would be determined at the national level rather than local level under this option, the community and interested parties will still retain the right to comment on, and put forward representations relating to an application.
- 6.68 Community and Town councils will also benefit from this option by having the ability to submit an LIR to the Welsh Ministers.

**Option 3 - Amend thresholds and criteria for Developments of National Significance to include overhead electric lines up to 132KV, where they are associated with a devolved generating station, to be determined by an appointed person, namely a Planning Inspector. By default, altering this threshold will not remove any existing permitted development rights.**

### **Description**

- 6.69 Similar to option 2, this option would see applications for overhead electric lines up to 132KV be examined and determined by the Welsh Ministers rather than at the local level, where they are associated with a devolved generating station.
- 6.70 However, at present, there is a requirement for all DNS projects to be determined by the Welsh Ministers, rather than by an Inspector appointed on their behalf. This option would seek to amend the current arrangements by allowing the Welsh Ministers to appoint an Inspector on their behalf to undertaking the examination and determination of these applications.

### **Costs**

#### Welsh Government

- 6.71 As set out in Option 2, the cost to the Welsh Ministers will be between £41,030 and £43,700 per application. However, in these instances, the Welsh Ministers will not recover the application for determination. This costs £14,700. Thus, the total cost the Welsh Ministers will be between £26,330 and £29,000. This will be offset by fees.

#### Local Planning Authorities

- 6.72 There will be no additional costs to LPAs under this option when compared to option 2. Therefore, the total estimated costs to LPAs will be approximately £1,940 per year.

#### Development Industry

- 6.73 There will be a cost saving to developers under this option when compared to Option 2, as fees will be lower. Under Option 2, including LIR, fees will be between £12,200 and £12,865. However, as the Welsh Ministers' cost of £14,700 for determining the application will not be included, the total estimated cost will be approximately between £8,525 and £9,190; a saving on Option 2.

#### The Community

- 6.74 Similar to option 2, the community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning authorities. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.
- 6.75 The ability for community and town councils to submit an LIR will also remain.

#### **Benefits**

##### Welsh Government

- 6.76 The ability for the Welsh Ministers to transfer responsibility for determining applications for overhead electric lines to an Inspector will mean the Welsh Ministers can use the resources saved from determining these applications to carry out the necessary work to determine more complex and controversial applications.
- 6.77 There is also the additional benefit of Welsh Ministers retaining the power to recover jurisdiction over DNS applications, should they consider it appropriate.

##### Local Planning Authorities

- 6.78 Similar to Option 2, LPAs will have greater resource and less time restrictions to focus on their day-to-day role in administering the planning system within their locality.
- 6.79 However, LPAs will retain the ability to have an input in the merits of an application submitted within their locality by submitting an LIR and also encouraging applicants to engage in pre-application discussions.

##### Development Industry

- 6.80 As with Option 2, developers will only need to engage with a single consenting authority rather than potentially having to submit an application to more than one LPA (in cases where a development would cross LPA boundaries).
- 6.81 At present, there is a requirement for all DNS projects to be determined within a 36 week period. However, by allowing Inspectors to determine applications for overhead electric lines, this can reduce the existing timeframe by 12 weeks, providing timelier decisions to developers, along with a cost saving.

### The Community

- 6.82 Although applications would be determined at the national level rather than local level under this option, the community and interested parties will still retain the right to comment on, and put forward representations relating to an application.
- 6.83 Community and Town councils will also benefit from this option by having the ability to submit an LIR to the Welsh Ministers.

### **Summary and preferred option**

- 6.84 The potential for overhead electric line applications to pass through a number of LPA boundaries will mean separate consents will be required, potentially leading to significant delays to developers. It is therefore preferable for these applications to be determined at the national level, ensuring one consenting authority.
- 6.85 However, compared to existing timeframes, the Welsh Ministers will have a 36 week determination period for these applications under the DNS regime, unless they have the ability to appoint an Inspector to determine them on their behalf, which can reduce this timescale by 12 weeks. While there will be additional cost to developers relative to Option 1, the benefit outweighs this cost.
- 6.86 Therefore, option 3 is the preferred option.

| <b>Table 3: Option 1, Option 2 and Option 3</b> |                   |                              |                            |
|---|-------------------|------------------------------|----------------------------|
|   | Option 1          | Option 2                     | Option 3                   |
| Welsh Ministers                                 | £0 (cost neutral) | £0 (cost neutral)            | £0 (cost neutral)          |
| LPAs  | £0 (cost neutral) | £0 (cost neutral)            | £0 (cost neutral)          |
| Development Industry                            | £3,280*           | Between £12,200 and £12,865* | Between £8,525 and £9,190* |
| The Community                                   | N/A               | N/A                          | N/A                        |

\*Due to a lack of available information, these costs do not include overhead electric lines under 132KV.

### **Energy storage**

6.87 Two options have been considered:

- Option 1 – Do nothing. Energy storage applications above 10MW continue to be determined by the Welsh Ministers via the Developments of National Significance (“DNS”) regime.
- Option 2 – Remove energy storage applications above 10MW from DNS, for determination at the local level by the relevant LPA. This is the preferred option.

**Option 1 – Do Nothing. Energy storage applications above 10MW continue to be determined by the Welsh Ministers via the DNS regime.**

### **Description**

6.88 This option would retain the status quo and applications for energy storage projects above 10MW must seek planning consent via the DNS process.

### **Costs**

### Welsh Government

- 6.89 In the 2.5 years since DNS came into force, no applications for energy storage have been received by the Welsh Ministers, therefore, it is not possible to quantify the likely costs to the Welsh Ministers over a set period. However, Table 1 (above) sets out the estimated minimum costs for engaging in the DNS process.
- 6.90 Between 2006 – 2016 one application for energy storage was submitted in Wales, which consisted of a 10MW battery storage project. Although this application pre-dated the DNS process, research<sup>6</sup> has indicated the application was determined within a five week period and there were no significant hurdles in the planning process.
- 6.91 Based on this information, it would be reasonable to assume the majority of applications for a storage facility of above 10MW would likely be examined by way of either written representations or by hearing (or a combination of these procedures). Therefore, estimated costs to the Welsh Ministers for examining and determining an application within this threshold would likely cost between £41,030 and £43,700. However, these costs will be recovered through fee revenue and is therefore, cost-neutral.
- 6.92 Developers may also seek pre-application services from the Welsh Ministers, which would also incur a cost. However, as seeking pre-application services is discretionary and not a mandatory requirement, we are unable to quantify the financial costs for these services.

### Local Planning Authority

- 6.93 Retaining energy storage applications within DNS will require LPAs to produce and submit a Local Impact Report (“LIR”) for each DNS application. The cost of producing an LIR on a new scheme is £7,750. These costs will be recovered through fee revenue.

### Development Industry

- 6.94 Applications for storage above 10MW will likely be examined by written representations or hearing (or a combination of these procedures), although if deemed necessary, hearings and inquiries will be used. This is a cost of approximately between £41,030 and £43,700 per application, along with a fee

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<sup>6</sup> Research into the thresholds and criteria for Development of National Significance in Wales (prescribed under Section 62D of the Town and Country Planning Act 1990 – Parsons Brinckerhoff (April 2017)

for the production of an LIR to the LPA of £7,750. This is a total of between £48,780 and £51,450 in fees per application.

- 6.95 Further additional costs may be incurred by developers, should they seek pre-application advice from either the Welsh Ministers, relevant LPA or both. However, as seeking pre-application services is discretionary and not a mandatory requirement, we are unable to quantify the financial costs for these services.
- 6.96 The cost of preparing an application has not been assessed as this would be the same in all cases.

### The Community

- 6.97 The community and interested parties are able to review and comment on proposed schemes submitted to the Welsh Ministers and local planning authorities. However, it is not possible to quantify a financial figure based on the time spent commenting on proposed schemes.
- 6.98 There is also provision in DNS which enables community and town councils to submit a voluntary LIR, although none have been submitted to date. Where they consider it necessary to do so, community and town councils will require time to compile and submit such a report. However, members and volunteers of such councils are generally non-salaried; therefore, this impact is also not financially quantifiable.

### **Benefits**

#### Welsh Government

- 6.99 There are no identifiable benefits to the Welsh Government as they would remain as the determining authority for applications relating storage projects above 10MW. The DNS process would be used to determine applications which are unlikely to be proportionate to the process.

#### Local Planning Authority

- 6.100 Although LPAs would be the consenting authority for applications of up to 10MW, they would retain a role within the DNS process by having the ability to submit LIRs to the Welsh Ministers, ensuring these representations are taken into account when examining and determining an application. However, it would be more appropriate for LPAs to be the determining authority for applications up to 10MW.

### Development Industry

- 6.101 There are no identifiable benefits to the development industry under this option, as the DNS regime can act as a consenting barrier when assessing the minimal physical scale and impacts of storage technologies above 10MW. Furthermore, this option would see developers being required to submit an application through different consenting regimes (either DNS or TCPA), depending on the size of a proposed development.

### The Community

- 6.102 Communities and interested parties would benefit from the opportunity to review and comment on proposed schemes submitted to the Welsh Ministers and LPAs.
- 6.103 There is also provision in DNS which enables community and town councils to submit a voluntary LIR. Where they consider it necessary to do so, community and town councils will require time to compile and submit such a report.

## **Option 2 – Remove energy storage applications above 10MW from DNS, for determination at the local level by the relevant LPA.**

### **Description**

- 6.104 This option would see the removal of storage projects from the DNS process (i.e. between 10MW – 50MW) and transfer the examination and determination of these applications back to LPAs, who would now be responsible for consenting all applications for energy storage up to 350MW, onshore.

### **Costs**

#### Welsh Government

- 6.105 As this option proposes applications for storage up to 350MW being examined and determined at the local level, the Welsh Ministers will not receive fee revenue of between £41,030 - £43,700 per application. However, as the DNS process is predicated on full cost recovery, the impact would be cost-neutral. As discussed in Option 1, there have been no applications for storage submitted to the Welsh Ministers under the DNS process.

#### Local Planning Authority

- 6.106 LPAs will be required to examine and determine applications for storage, up to 350MW, which will incur a cost for undertaking this work.

- 6.107 However, rather than applications being determined using the current DNS fees, they will be subject to fees set out in the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (“the 2015 Regulations”).
- 6.108 As there are no specific fees set out in the relevant Schedule to the 2015 Regulations to apply to energy storage facilities, estimated costs to LPAs are based on Category 9(b) of Part 2 to Schedule 1 to the 2015 Regulations (the carrying out of any operations not coming within any of the above categories) which specifies a fee of £190 for each 0.1 hectare of a site area, subject to a maximum fee of £287,500.
- 6.109 Although little evidence is available due to a lack of storage applications having been submitted in Wales, the case study identified in Option 1 was based on a 10MW storage facility which covered 0.27 hectares.
- 6.110 The 2015 Regulations specify a fee of £190 per 0.1 hectare. Therefore, the application for a 10MW storage facility would require a fee of £570.
- 6.111 There will also be a loss of revenue for LPAs who will no longer be required to produce and submit an LIR. While this is the case, the fees apportioned for the determination of an application and the production of an LIR are based on actual costs. This option is therefore cost-neutral.

#### Development Industry

- 6.112 Developers will still be required to submit a fee with their application for storage, although they would be subject to the fees prescribed in the 2015 Regulations rather than DNS fees and therefore, taking account of site area rather than output.
- 6.113 Developers will be required to pay a fee of £570 on average per application. This is a saving of between £48,210 and £50,880 on Option 1. The Development Industry will also be required to bear the cost of preparing an application.

#### The Community

- 6.114 Similar to option 1, communities and interested parties will continue to have the opportunity to put forward their representations on proposed schemes to the LPA, although it is not possible to quantify a sum based on the time spent commenting on proposed schemes.



6.115 if storage applications are removed from the DNS process, community and town councils will be unable to submit an LIR, although, they will retain the opportunity to put forward representations outlining their views.

### **Benefits**

#### Welsh Government

6.116 Removing storage projects from DNS will allow the Welsh Government to focus resources on other applications and consents which require greater input and more time.

#### Local Planning Authority

6.117 As the determining authority, LPAs will have greater influence on developments of a local scale in their area.

#### Development Industry

6.118 As well as a significant cost saving in relation to application costs, developers can expect barriers to the consenting process to be removed and an overall more proportionate method for determining storage applications.

#### The Community

6.119 Benefits to the community and interested parties will be negligible as these groups may contribute and participate in the planning process in the same manner as discussed in option 1.

### **Justification for 2 options**

6.120 The consenting of any development remains enshrined in the TCPA regime, including energy storage. However, the only variable is the process. This may be either DNS, as at present, or conventional planning permission from LPAs. There are no other alternatives.

### **Summary and preferred option**

6.121 Evidence<sup>7</sup> has suggested storage projects would be better suited to being determined at the local level rather than the national level. Furthermore, the current proposed arrangements (set out in Option 1) will introduce a situation

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<sup>7</sup> Research into the thresholds and criteria for Development of National Significance in Wales (prescribed under Section 62D of the Town and Country Planning Act 1990 – Parsons Brinckerhoff (April 2017)

where both LPAs and the Welsh Ministers would be the relevant consenting authority, depending on the threshold of a project, which does not offer developers consistency where it concerns storage applications.

6.122 In terms of costs, both options are cost-neutral for the Welsh Ministers and LPAs as the fees required to be submitted with an application are set at a level which achieves cost recovery for these determining authorities. However, Option 2 provides a significant cost saving to developers, which may result in a greater number of applications being submitted in Wales as a more attractive option to developers.

6.123 In order to ensure proportionality and consistency, moving storage projects out of the DNS regime for determination at the local level is the most suitable way forward. Therefore, Option 2 is the preferred option.

| <b>Table 4: Option 1 and Option 2 (cost per-application)</b> |                             |                   |
|--|-----------------------------|-------------------|
|  | Option 1                    | Option 2          |
| Welsh Ministers  | £0 (cost neutral)           | £0 (cost neutral) |
| LPAs   | £0 (cost neutral)           | £0 (cost neutral) |
| Development Industry   | Between £48,780 and £51,450 | £570              |
| The Community  | N/A                         | N/A               |

## ANNEX 1: COMPETITION FILTER

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