

# Chapter 6: Natural resource issues

## 6.1 OVERVIEW

6.1.1 In this chapter we use the principles outlined in Chapter 3 to assess whether there should be changes in powers in natural resource areas and evaluate the scope for other changes. In particular we cover water, energy, the Crown Estate, and the environment.

## 6.2 WATER

### Current position

- 6.2.1 Water and flood defence are devolved to the National Assembly for Wales under Schedule 7 of the Government of Wales Act 2006. ~~However sewerage is not devolved. This means that water supply and water resources management are devolved. However, but W~~ water industry regulation is not ~~devolved. devolved.~~ Schedule 7 ~~also~~ contains two exceptions to the devolved competence of the Assembly relating to water. These exceptions are “a the appointment and regulation of water undertakers or sewerage undertakers for any whose area is not wholly or mainly in Wales and the most of which is in England” and “licensing and regulation of water suppliers within the meaning of the Water Industry Act 1991 (c56).” Sewerage is also not devolved.
- 6.2.2 Under the terms of the EU Water Framework Directive there are two cross-border river basin districts in Wales and England - the Severn (incorporating the river catchments of the Severn and the Wye) and the Dee. There is a further river basin district entirely in Wales, covering Western Wales. The Western Wales river basin district is exclusively within the executive competence of the Welsh Ministers ~~(and, in so far as set out in Schedule 7 to the Government of Wales Act 2006, the National Assembly could exercise legislative competence within the terms of the Directive)~~. Under the Directive, the United Kingdom is required to manage the Severn and the Dee river basin districts in a holistic fashion. All aspects of European Union and domestic water environment law and policy sit within the context of the Directive. Objectives must be set for water bodies within those river basin districts, irrespective of administrative boundaries, for the good of the water environment in its broadest sense. Therefore, although water environment policy is largely devolved, the Secretary of State and the Welsh Ministers and their respective delivery bodies are obliged under the Directive to produce joint plans in order to implement all aspects of water environment law.
- 6.2.3 The National Assembly's legislative competence is currently limited to the parts within Wales of the appointment and operation of the areas of three water undertakers – Dŵr Cymru/ Welsh Water, Dee Valley Water and Albion Water – whose areas are mainly in Wales. Under the UK Government's

current Water Bill (which is being introduced among other things to increase competition)<sup>1</sup>; this distinction is maintained - the competition requirements are to be a matter for the Welsh Government Ministers for water companies operating wholly or mainly in Wales. Competition for tThose wholly or mainly in England, such as Severn Trent, part of whose operations are in Wales, remainsare a matter for the UK Government English Ministers.

- 6.2.4 Under section 114 of the Government of Wales Act 2006 the Secretary of State has the power to make an order preventing an Assembly Bill being submitted for Royal Assent if he or she has reasonable grounds to believe that the Bill may contain provisions which might have a serious adverse impact on water resources in England, water supply in England or the quality of water in England.
- 6.2.5 The second power of intervention of the Secretary of State has under the 2006 Act is set out in section 152 and relates to the executive powers of Welsh Ministers. The Secretary of State may intervene if it appears to him /her that the exercise of an executive function (or failure to exercise that function) might have a serious adverse impact on water resources, water supply or quality in England.

#### **Box 6.1: Evidence on Water**

The UK Government said: *'The technical features of the water and sewerage industries are complex. Separating cross border systems may not always be technically feasible at reasonable cost and may create significant regulatory difficulties. Any proposal to align the legislative competence of the Assembly and executive competence of the Welsh Ministers in relation to the water and sewerage industries with the geographic boundary of Wales, would have significant implications – including for the management of water resources; the potential impact on the stability of the regulatory regime for the statutory water and sewerage undertakers; investment and asset management; and the inter-dependence of the cross-border water and sewerage industries'*.

The Welsh Government said: *'We want to remove the Exception relating to the licensing and regulation of any licensed water supplier within the meaning of the Water Industry Act 1991. We also wish to remove the Exception relating to the appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales. This would ensure that the Assembly had legislative competence in relation to all matters relating to water, including licensing and the appointment and regulation of water undertakers, and that this competence extended to the geographical boundary with England in line with the legislative competence for other Acts of the Assembly. In addition to removing these Exceptions, we seek to secure new legislative competence for the Assembly in relation to sewerage. This would complement the Assembly's broad competence in relation to water and other*

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<sup>1</sup> This will allow all business, charity and public sector customers to choose their water and sewerage supplier for the first time, and enable multi-site operators to tender for one supplier across Great Britain.

environmental matters. We wish to ensure that legislative competence for sewerage extends up to the geographical boundary with England. We also propose removal of the existing Secretary of State unilateral intervention power in the case of functions relating to water. There is an important interdependency between Wales and England in terms of water resource management, water supply and water quality. We consider that any concerns about potential adverse impact in England in relation to these matters would be more appropriately addressed through inter-governmental mechanisms that set out the basis for co-operation and joint working between the respective Governments.”

Dŵr Cymru said: ‘The view of Dŵr Cymru is that there is a need to rationalise those powers devolved to the Welsh Government. At present, schedule 7 of the Government of Wales Act 2006 does not provide legislative competence to the Assembly in all areas of the water industry - for example, there is no competence in respect of sewerage issues. This creates needless complexity and in practice severely limits the practical scope of those powers granted in respect of clearly connected areas of competence (for example, water supply, water resource management (including reservoirs), water quality and representation of consumers of water and sewerage services). There is no obvious logic in the way in which power in some of these areas have been devolved, and in others they have not. The need to resolve this issue is urgent, since as matters stand, the Assembly will pass a legislative competence order in respect of some significant sections of the draft Water Bill, where others will automatically apply in Wales if passed by the UK parliament.’

Dee Valley Water (DVW) said: ‘There are also potential cross-border issues that could adversely affect DVW in particular; having such high proportions of its customers on each side of the border (60% Wales and 40% England). There is also the prospect that, for policies based on national rather than the company boundary, DVW will be subject to the increased complexity of applying different policies and rules to its customers depending on which side of the border they are.’

## Assessment

- 6.2.6 The water industry is privatised in England and Wales. Water and sewerage issues in England and Wales are complex, particularly in relation to cross border issues, [reflecting the fact that river basins straddle geographic boundaries.](#) ~~The exceptions to the National Assembly for Wales’ legislative competence as set out in Schedule 7 of the Government of Wales Act 2006.~~ As in all matters, we are conscious that our task was to consider how the constitutional arrangements could be modified to allow the interests of the people of Wales to be better served. We believe that the importance of water policy will grow, and hope to make recommendations that will be in the interest of consumers and which lead to effective arrangements in the future.
- 6.2.7 Based on our principles of subsidiarity, accountability and coherence, we believe the presumption should be in favour of aligning Assembly competence with the geographic border. [The legislative authority of UK Ministers over water undertakers in parts of Wales is anomalous, and](#) ~~there~~ [there](#) is a particular problem ~~that~~ [with](#) some citizens in England

(customers of Dwr Cymru, Dee Water and Albion Water) are being subject to Welsh legislation, something on which they have no representative voices ~~in a concern,~~ ~~as~~ mentioned to us by a number of English Members of Parliament ~~to us.~~<sup>2</sup>

- 6.2.8 ~~-A~~ ~~However~~ at the same time there is clear evidence that water issues need to be considered on an inter-governmental and river basin basis. Appointing different water undertakers on the two sides of the border where infrastructure is shared would be extremely complicated, and t, There is also a potential downside if the administrative border cut across the operations of a single ~~-water~~ undertakers. The undertakers told us that it would be possible for them to operate under different regulatory arrangements on the two sides of the border, but that there would be a degree of complexity. ~~raised with us the complexity associated with operating under different regimes across the border, though that this would not be impossible.~~ We would not want to see anything done that would increase costs to consumers.
- 6.2.9 ~~Is~~ there is clearly a balance of considerations here. In principle, the administrative boundary should define the limit of Welsh Government competence. However the interests of both English and Welsh consumers and producers are also important. We would like to see more work done co-operatively between the two governments so that, as far as possible, the Welsh Government makes decisions on water inside Wales, and the UK Government makes those decisions in respect of England. We believe that, as a first step, There should therefore be a formal intergovernmental protocol for resolving water issues should be agreed with this aim in mind ~~such this issues and protecting the interests of both English and Welsh consumers and producers.~~
- 6.2.10 In relation to sewerage, no strong arguments have been put forward for maintaining the status quo. It is unclear why legislative competence in relation to sewerage was not devolved as in Scotland and Northern Ireland ~~and is subject to the same restrictions as water.~~ The evidence clearly points towards devolution. We therefore believe that there is a strong case for powers relating to sewerage should be devolved on the same basis as those relating to water.
- 6.2.11 The powers of intervention of the Secretary of State are also anomalous ~~need to be subjected to close scrutiny.~~ In principle, it seems unjust for any Minister to be able to overrule an elected body's wishes without means of redress or challenge. The ~~if~~ a formal intergovernmental protocol in relation to water we recommend earlier should ~~is established as suggested above which~~ included protection of the rights of English consumers of water from Wales and vice versa. T, ~~he~~ Secretary of State's ~~these~~ powers of intervention she ~~ould~~ be replaced by a mechanism within the eat protocol.
- 6.2.12 Finally we have heard in our public meetings that Wales should exploit its water resources more effectively. The report of the Independent Commission

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<sup>2</sup> Welsh customers of English companies are represented by their MPs. Welsh customers of Welsh companies are represented by their AMs.

on Funding and Finance in Wales's (the Holtham) report) explored this issue.<sup>3</sup> Around one third of Welsh water supplies residents of England. However the overall value (annual turnover) of Welsh water is only around £300m a year. The Holtham Commission also argued against introducing a Welsh water tax. But with increasing water shortages in the south-east of England, the scope for developing the industry further may increase over time and should be kept under review.

### **Costs**

- 6.2.13 The Welsh Government does not envisage any significant public sector cost implications associated with the devolution of sewerage policy and licensing for water and sewerage. The majority of costs associated with sewerage management are met through the water industry and it is unlikely that this would ~~would not expect this to~~ change as a result of devolving this policy area fully to the National Assembly.
- 6.2.14 There is likely to be some modest additional administrative cost for the Welsh Government to ensure that any new responsibilities and requirements are managed appropriately, but it is too early to quantify this precisely. Similarly, we do not envisage significant public sector cost implications if there were devolution boundary changes both in relation to the existing functions conferred upon Welsh and UK Government Ministers as well as in relation to the legislative competence conferred upon the National Assembly for Wales. The Welsh Government already sets the policy direction for water and sewerage in Wales and all new policies would continue to be subject to appropriate scrutiny and consultation.
- 6.2.15 There will be some administrative costs to the public sector, for both the Welsh and UK Governments, as a result of changes to the devolution boundary, and the Welsh Government told us that it intended to progress work with the water industry and regulatory bodies to understand the practical issues that would need to be addressed were the devolution boundary be changed. Ahead of this it is not possible to be precise, but the Welsh Government does not expect these costs to represent a significant permanent increase in its existing water team.

### **Recommendations**

- a. powers over sewerage should be devolved to the National Assembly for Wales;
- b. an inter-governmental committee and protocol should be established to consider aligning the boundaries of competence with the national boundaries, while protecting the interests of water consumers in Wales and England;
- c. and a formal protocol should be established in relation to cross-border issues. This should cover, among other matters, the democratic representation of cross border interests.

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<sup>3</sup> reference

- d. the Secretary of State's existing legislative and executive powers of intervention in relation to water should be removed in favour of ~~the above mechanisms under the formal~~ inter-governmental protocol agreement. ~~This should cover, among other matters, the issue of democratic representation of cross border interests.~~

## 6.3 ENERGY

### Current position

- 6.3.1 The majority of energy and climate policy is non-devolved, with the UK Government retaining responsibility for:
- overall strategic approach to renewables and non-renewables and associated policies;
  - regulation of the energy industry;
  - international negotiations on energy and climate change, including engagement with the European Union (though this is done; in consultation, as appropriate, with the Devolved Administrations);
  - policy on economic development to cover the generation, transmission, distribution and supply of electricity, oil and gas, nuclear energy and nuclear installations, ~~and coal, apart from environmental matters~~;
  - all development consents relating to 'nationally significant' projects, which are defined as electricity generating infrastructure above 50MW onshore and 100MW offshore, and certain pipeline, overhead electricity line and harbour facility projects;
  - licensing of oil and gas exploration and production activities and related consenting decisions;
  - coal, including mining and subsidence, overseeing the current coal industry in the UK, managing the environmental impacts of current and previously active coal mines, and managing the UK Government's responsibilities and liabilities arising from the previously nationalised coal industry, such as the rights of retired miners; and
  - energy conservation, except for the encouragement of energy efficiency otherwise than by prohibition or regulation.
- 6.3.2 There are some devolved responsibilities in the area of energy. Environmental protection, economic development and some aspects of planning are devolved. Welsh Ministers also have executive powers in some non-devolved areas, including powers under the Climate Change Act 2008.
- 6.3.3 Consents for onshore power generating infrastructure below the threshold of 50MW, ~~which~~ are dealt with by local authorities in Great Britain England and Scotland, are therefore the ultimate responsibility of the Welsh Ministers in Wales. Offshore, the Welsh Government has responsibility for consents for developments of less than 1MW, with developments between 1 and 100MW

the responsibility of the Marine Management Organisation, a non-departmental public body of the UK Government. [It is also possible for larger offshore projects to come within the competence of Welsh Ministers if the developers decide to use the vehicle of the Transport and Works Act 199X.](#)

- 6.3.4 The responsibility for the consents of larger energy generating infrastructure is not devolved. However the Department for Energy and Climate Change ~~would~~ normally takes account of the Welsh Government's planning priorities, expressed in the Planning Policy Wales document and Technical Advice Notes (TAN) – such as TAN 8 on renewable energy. [Although Welsh Ministers have limited responsibility for energy consents, consents for “associated developments” in respect of large generation projects \(for example, sub-stations\) are fully devolved.](#)

### **Box 6.3: Evidence on energy**

In our opinion poll, 70 per cent were in favour of the National Assembly for Wales having control of renewable energy, including large windfarms. In our questionnaires, [just](#) 15 per cent thought that windfarms should be dealt with by the UK Government.

The UK Government said: *“The Government believes that a single market and regulatory regime across Great Britain is an effective way of ensuring competition and provides a consistent regulatory framework which is important for investors.*

*The UK Government has found the 50MW threshold for onshore development to be appropriate because many schemes above 50MW are of sufficient importance and scale to be considered nationally significant. Changing the threshold from 50MW to 100MW could have a negative impact on energy and planning policy for major infrastructure and result in increased complexity in the planning system and less efficient, more piecemeal and more expensive development.*

*Energy networks across the Welsh / English border are substantially integrated (North Wales and South Wales in particular, with proposals being developed for mid-Wales), and maintaining a unified planning regime would facilitate further development of this important infrastructure.*

*The UK Government believes there is a strong case to realign consenting powers in the area of “associated development” under the Planning Act 2008.”*

The Welsh Government said: *‘The Welsh Ministers should have executive responsibilities in relation to the consenting of large scale energy generation (other than nuclear power) and related energy infrastructure, including consenting in the Welsh inshore and offshore marine areas.*

*‘Ministers have corresponded with their UK counterparts on numerous occasions to point out that we are being disadvantaged by the Renewable Obligation regime compared to the other Devolved Administrations. The UK Government has noted its intention to move to a unified ROC regime but differences remain despite the recent review of RO banding in Scotland, Northern Ireland and England and Wales.’*

Natural Resources Wales said: *‘Further devolution of energy powers may allow some simplification of consenting arrangements but more importantly may help to drive better integration of strategic planning for energy that more effectively coordinates*

*delivery of energy policy and related infrastructure in Wales. The success of this would depend strongly on the adequacy of resources. Energy development can also have significant cross-border implications, especially in the marine environment. Decisions about individual projects and planning for energy at a strategic level will often require extensive interaction with planners and regulators in other parts of the UK, irrespective of the further devolution of energy powers.'*

The Federation of Master Builders said: *'The Welsh Government needs to ensure it makes the most of the 'huge potential' renewable and non renewable energy has for Wales. The Welsh Government needs further devolution of energy consenting, to ensure incentives for marine wave and tidal projects in Wales are on a par with that which already exists in Scotland'.*"

Friends of the Earth Cymru said: *'The retention of powers of consent and planning over electricity-generating infrastructure and fossil fuel developments by Westminster has meant that Wales has already missed out on first-mover advantage in most renewables industries.*

*'The complexity of the energy planning and consenting arrangements puts in place a barrier that is additional to all other factors and is absent from the planning and consenting regime in Northern Ireland and Scotland – ostensibly our competitors in renewables development. There appears to be no logical reason for Wales being treated so differently to the other devolved nations.*

*'For these reasons Friends of the Earth Cymru believes that all powers to consent, licence and permit energy developments in Wales should be devolved to the National Assembly for Wales.'*

The Parliament for Wales Campaign supported:

- *The right for the Welsh Government to decide on all energy planning decisions (except under national security grounds).*
- *The right for our people to receive a share of profits from energy produced in excess to our own needs.*
- *The right for the Welsh Government to agree energy prices for fuel poverty families.*
- *The right and responsibility for the Welsh Government to decide all aspects of policies associated with climate change and carbon reduction including petrol taxation and support for rural garages.*

Royal Society for the Protection of Birds (RSPB) Cymru said: *'The RSPB has called for amendments to be made such that decisions on large-scale energy projects in Wales are made in line with Welsh planning policy. Indeed, during the last Assembly term the National Assembly for Wales' Sustainability Committee recommended that this outcome should be sought through amendments to the Planning Act 2008, but such changes did not come about.'*

SSE energy company said: *'SSE is equally comfortable with the UK Government making decisions or with devolved administrations doing so, as has been the case in Scotland where SSE has numerous generation assets. The key driver of the development of energy infrastructure projects is a long-term and stable regulatory*

environment.

*'SSE would wish to see decisions relating to large-scale generation projects and auxiliary developments (for example, a wind farm and a sub-station) to be made by a single body in order to ensure consistency of approach and clarity in the decision-making process. Any proposals to devolve powers relating to energy generation would also need to be compliant with National Policy Statements at the UK level.*

*'If executive powers over large-scale energy development were transferred to the Welsh Government, SSE would also wish to see an accompanying step-change in resources to enable the optimum delivery of Wales' significant and ambitious targets regarding renewable electricity. The Welsh Government is already falling behind on its own targets for delivery of onshore wind, much of which (i.e. under 50MW) lies within their current executive competence.'*

The UK Changing Union Partnership said: *'The existing division of powers on energy, which has been identified by the First Minister as strategically crucial for Wales, is effectively an arbitrary one, specifically in the areas of planning and consent. Some of the disadvantages of this include: uncertainty over policy direction and inconsistency of process for developers, a temptation to indulge in a cross-border blame-game, and the potential for UK and Welsh Government policy aspirations to be at odds.'*

*'Respondents have, however, expressed concern about a lack of clear policy direction and leadership by the WG as well as about civil service capacity. We regard these as issues to be tackled rather than obstacles to the acquisition of more comprehensive powers.'*

Unite Wales said: *'Unite Wales supports the Welsh Government's evidence to the Commission that calls for the devolution of responsibilities for consenting to large scale energy generation and the related infrastructure. Devolving competency for consent would enable a more integrated approach which would be good for investment and good for generating decent, skilled employment opportunities in Wales.'*

Wales Trades Union Congress (TUC) Cymru said: *'The Wales TUC supports the Welsh Government's consistent calls for the transfer of the executive responsibilities to Welsh Ministers in relation to the consenting of large scale energy generation and related energy infrastructure. We believe that doing so would help reach targets for increasing the amount of energy generated from renewable sources and allow for a more consistent approach to energy policy across Wales. This would allow for a more stable and predictable environment for investors and help safeguard and develop employment.'*

#### **Box 6.4: Key facts on energy**

The Wales energy market forms part of the overall Great Britain energy market. Some key statistics are:

- [Around](#) 13% of the electricity generated in Wales is [used outside Wales](#)~~exported~~;

- Of the electricity generated in Wales, 7.9% is renewables. This compares with 26.8% for Scotland, 6.2% for England, 12.6% for Northern Ireland and 9.4% for the United Kingdom as a whole;
- The majority of the energy consumed in Wales is generated from oil and gas; and
- Milford Haven pPort handles 29% of Great Britain's seaborne trade in oil and gas.

## Assessment

- 6.3.5 ~~There are a number of different issues to consider, including energy strategy and development consents. Our principles of subsidiarity and effectiveness are of key importance in this area. The profile of~~ We are conscious of the ~~heightened importance attached to~~ energy issues is very high, both from the perspective of the interests of local communities and from the perspective of meeting supply and environmental challenges.
- 6.3.6 The evidence we received generally supports the view taken by the Calman Commission in Scotland that the single Great Britain energy market requires a Great Britain-wide approach to regulation and overall energy strategy.
- 6.3.7 Similarly, little evidence was received on the current United Kingdom-wide approach to international negotiations on energy and climate change, on nuclear policy, on the transmission of electricity, on the extraction of fuels, on the regulation of the energy market or on energy conservation.
- 6.3.8 The bulk of evidence received on energy related to the consents regime for the generation of electricity within Wales. Most evidence called for the responsibility for development consents for renewable energy projects greater than 50MW (onshore) and offshore (above 1MW) to be devolved to Welsh Ministers, especially in the context of~~including~~ the need to meet the Welsh Government's renewable energy targets. There was less evidence suggesting that development consents should be devolved in the case of non-renewable generation.
- 6.3.9 ~~In principle,~~ devolution of consenting powers would reduce the current complexity surrounding the planning and consent arrangements. It would and give the Welsh Government greater accountability for developments in Wales and provide greater clarity for citizens. For example, it is sometimes unclear to people in affected communities whether they should make representations to the Welsh Government in relation to their planning priorities, or to the UK Government for their decision-making powers over energy. It would also allow decisions of nationally significant infrastructure projects to be made in line with Welsh planning policy and resolve the current situation where the UK Government's National Policy Statement takes precedence over the Welsh Government's planning policies – for example, TAN 8 guidance for onshore renewable developments in Wales.
- 6.3.10 It would therefore meet our principles including subsidiarity, clarity, coherence and accountability. ~~We do not~~ However, need to take account of our principle of effectiveness must also be taken into account in the context of

United Kingdom-wide energy security of supply – an increasingly important duty of the UK Government.–

- 6.3.11 Current arrangements appear to have no rational or principled basis, and ~~There are a number of different ways they could be~~ modified ~~the current arrangements to improve the constitutional settlement in this area.~~ Options would range from devolving all energy consenting powers to restoring it entirely to Westminster, with changing the threshold of devolved consents or fully devolving renewable energy consents falling in between.
- 6.3.12 ~~We recognise that~~ full devolution of all energy consenting responsibilities would not satisfy our principles of effectiveness ~~or subsidiarity~~. As the United Kingdom has EU obligations to generate an agreed proportion of its electricity from renewable sources, full devolution would be an obstacle to the UK Government being able to meet those obligations. It ~~might~~ may also present security of supply issues; ~~noting that~~ Wales is currently a net exporter of electricity. There would also be substantial inefficiencies in the Welsh Government having to have capacity to make very complex, but very rare, consenting decisions – particularly on nuclear consents.
- 6.3.13 On the other hand ~~Similarly~~, it would be difficult to argue that responsibility for energy consents should be returned to Westminster. This would not meet our principles of equity, nor of subsidiarity.
- 6.3.14 We have concluded that the ~~If there were changes to the current threshold of 50MW onshore and 1MW offshore, there should be a~~ balance between subsidiarity and effectiveness would best be achieved first by changes to the current threshold of 50MW onshore and 1MW offshore. The National Assembly has a long-standing cross-party consensus in favour of increasing the threshold to 100MW for offshore and onshore generation. We believe that there is a good case for recommending a higher threshold. There are arguments for and against this. On the one hand, the larger the generation capacity, the greater its contribution to United Kingdom security of supply; on the other, any cut-off point is arbitrary. In our judgement, a threshold of 500MW seems to us reasonable. In practical terms, there would not be a great deal of difference between 100MW and 500MW, as the latter threshold would still not be large enough to capture the larger infrastructure projects, such as gas-fuelled power stations. The box below provides more information on the scale of energy projects in Wales.

**Box: the size of existing and planned energy projects in Wales**

To follow

- 6.3.15 An addition ~~Other option is that~~ Finally, renewable energy generation should be fully devolved. This would allow the Welsh Government to better meet its renewable targets, to ~~and~~ pursue carbon-reduction targets and to specialise in renewable energy consenting. In practical terms, the issues surrounding the consenting requirements of renewable projects are qualitatively similar whatever the size of the project ~~large and a very large wind farm would not be very different.~~ Furthermore, However, we are conscious that some

renewable projects have a greater generation capacity than some non-renewable projects. It is also difficult to change the balance of generation to achieve a more carbon-neutral energy system by controlling only one type of energy generation. From a security of supply and overall energy mix perspective, there is therefore arguably no logical case for distinguishing ~~renewables~~ from ~~non-renewables~~ ~~the other~~.

- 6.3.16 We conclude ~~that~~ on balance ~~that~~ consenting responsibility for all renewable energy generation, and ~~for~~ non-strategic non-renewables ~~generation projects~~, ~~namely~~; those below 500MW, should be devolved to Wales. It would be within the principle of subsidiarity for any proposed development which was located across the Wales and England boundary, particularly at sea, to be ~~the responsibility of~~ ~~managed by~~ the UK Government, ~~working in consultation with the Welsh Ministers~~.
- 6.3.17 If development consents for energy projects in Welsh offshore waters are ~~to be~~ devolved then there is an argument for the consents for marine licensing in that area ~~also~~ to be ~~also~~ devolved. This is discussed below.
- 6.3.11 ~~We turn now to the issue of 'associated developments'~~. Currently, in England only, the relevant legislation makes provision for 'associated development' (for example, roads and substations) that are part of a larger development to be consented to at a national level, as it forms part of a Nationally Significant Infrastructure Project (for example, a power station or a major overhead line). In Wales, any 'associated development' is determined at local authority level. ~~This which~~ can result in additional complexity, cost and uncertainty. ~~The two Governments should agree how to streamline the system to avoid unnecessary complexity~~ in the context of greater devolution of the consenting regime ~~proposed~~ ~~suggested~~ above, ~~it would make sense for decisions on associated consents to rest with the government that has responsibility for the main project~~. ~~A possible outcome would be a statutory obligation on the Secretary of State to take into account the views of local communities and the Welsh Government when considering developments holistically. There would then be a route for redress.~~
- 6.3.12 The Welsh Government and a number of organisations have called for responsibility for Renewables Obligation Certificates (ROC)<sup>4</sup> to be devolved. Discussions ~~continue~~ ~~are on going~~ between the UK Government and the Devolved Administrations on the Electricity Market Reform and the proposed Contracts for Difference (CfD) that will replace ROCs from 2017. The UK Government has stated that the Welsh Government will be statutory consultees on the design and delivery of CfDs alongside Scotland and Northern Ireland.
- 6.3.13. We ~~recommend~~ ~~suggest~~ that the new CfD system should be agreed with the devolved administrations and should ensure parity for Wales with the other Devolved Administrations.

## Costs

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<sup>4</sup> Reference

6.3.13 The Welsh Government has told us that a number of factors affect the level of funding which would need to be transferred to cover the administrative costs of consenting large scale energy generation (excluding nuclear). These include the exact nature of the functions and consenting regime being transferred, the number of estimated energy projects which would be considered in Wales on an annual basis, the existing costs for administering these functions and the degree amount of cost recovery (through applicant fees) within any existing consenting regime. (The existing consenting regimes recover around 60 per cent of their administrative costs, with the funding gap being covered by central government funding).

6.3.14 Taking these various elements into account, focussing in particular on the Nationally Significant Infrastructure Project regime administered for the UK Government by the Planning Inspectorate (responsible for onshore projects above 50MW and offshore above 100MW) and the Marine Management Organisation (covering offshore projects between 1- 100MW), and making some assumptions about the number of large scale onshore and offshore projects in Wales, the Welsh Government estimates that the current non-recoverable administrative costs of consenting large scale energy generation (excluding nuclear) projects in Wales is of the order of £0.4-0.5million. A transfer of this amount would therefore be needed to support the devolution of these powers.

6.3.15 The UK Government has said [to follow].

6.3.16 To conclude we do not think that our proposals will involve material additional costs.

## Recommendations

On energy we recommend:

- e. Responsibility for development consents for all renewable generation projects power stations and non-renewable projects below 500MW should be devolved to the Welsh Government. In this context, responsibility for The two Governments should agree how to streamline the system of associated development consents should rest with the Government with responsibility for the main project to avoid unnecessary complexity in the context of greater devolution of the consenting regime suggested above;
- e. There should be a statutory obligation for the Secretary of State to take account of Welsh planning priorities when granting consents over 500MW;
- f. ~~We recommend that~~ responsibility for issuing marine licences in Welsh offshore waters should be devolved;
- h. ~~Wales the Welsh Government~~ should have receive parity with Scotland and Northern Ireland for the proposed Contracts for Difference (CfD) which will replace Renewables Obligation Certificates from 2014 as part of the wider Electricity Market Reform

## 6.4 CROWN ESTATE

### Current position

6.4.1 The Crown Estate is land and property that belongs to the reigning Monarch “in right of the Crown” but is not the private property of the Monarch. The term is also used for the body that administers the Estate. This administrative body was established under the Crown Estate Act 1961 and is a trust estate, independent of the government and the Monarch. It has a public function to:

- Invest in and manage certain property assets belonging to the Monarch; and
- Remit its revenue surplus each year to the United Kingdom Consolidated Fund.

6.4.2 The Treasury is the Crown Estate’s sponsor department with the Economic Secretary as its sponsoring Minister. The Crown Estate is led and directed by its board of eight Commissioners. The board includes a member that represents Scotland, but no other part of the United Kingdom is specifically represented on the board. The Scottish Government is consulted on the appointment of the member who represents Scotland.

6.4.3 There is a Memorandum of Understanding between the Welsh Government and the Crown Estate governing the relationship between them and the role of the Crown Estate in Wales. This is welcome and should be regularly updated and made more widely available.

6.4.4 For management purposes the estate is divided into four business groups: urban, marine, rural and Windsor.

#### Box 6.5: Evidence on the Crown Estate

The Welsh Government said: ‘the Welsh Ministers should have a right of consultation in respect of a Crown Estates Commissioner with special responsibility for Wales.’

#### Box 6.6: Key Facts on the Crown Estate

The following are key figures about revenue raised and money spent in Wales:

- Wales accounts for a relatively small percentage of the value of the Crown Estates portfolio (about 1.8%);
- it also accounts for a relatively small percentage of the revenues (£8.6m in 2012-13, an increase of 26.5 per cent from 2011-12, and 2.6 per cent of the Crown Estate’s total revenue);
- the investment of the Crown Estate in Wales varies greatly from year to year. In although in 2012-13 the Crown Estate invested it was £1.6million in Wales, while in 2011-12 it was £84.3million in 2011-12; and
- in addition Wales benefits from the Coastal Communities Fund, which invests

in Wales half of the revenue from Welsh marine activities, around £1.15m a year.

## Assessment

- 6.4.5** There does not appear to be majority support for the transfer of ownership of the Crown Estate in Wales to the Welsh Government. The Calman report noted the benefits derived to Scotland from being part of a much wider and more profitable Estate and this argument also applies to Wales.
- 6.4.6** The Crown Estate already benefits Wales, for example by the Coastal Community Fund. It could however do more, for example by investment in its Welsh supply chain, particularly when it is developing off-shore energy.
- 6.4.7** This strengthens the argument that the arrangement for Scotland's representation on the Crown Estate Commissioner's board should be replicated in Wales.
- 6.4.8** As with the Scottish member on the Crown Estate board, it is appropriate that the Welsh Government should be formally consulted on the appointment of the Welsh Commissioner.
- 6.4.9** There is a case for a Crown Estate office being established in Wales, subject to normal value for money criteria, in order to promote and develop the role of the Crown Estate in Wales. Additionally, the existing memorandum between the Crown Estate and Welsh Government should be published and periodically updated.

## Recommendation

- f. On the Crown Estate:
- i. there should be a Welsh Crown Estate Commissioner appointed in consultation with the Welsh Government;
  - ii. a Crown Estate office should be established in Wales, subject to normal value for money criteria, to promote the development of the Crown Estate;
  - iii. the existing memorandum between the Crown Estate and Welsh Government should be published and periodically updated; and
  - iv. emphasis should be given by the Crown Estate to the Welsh supply chain, especially in developing off-shore energy in Wales.

## 6.5 ENVIRONMENT

### Current position

- 6.5.1** Environmental matters are for the most part devolved and we have ~~not received~~ ~~had much~~ little evidence to suggest changes in powers. The Planning Inspectorate reports to both the UK Government and Welsh Ministers and these arrangements appear to work reasonably well.<sup>5</sup>

<sup>5</sup> The National Assembly's Sustainability Committee's report on Planning in Wales January 2011 recommended "in the event that responsibility for energy consents over 50 Megawatts is devolved to

**6.5.2** However the Welsh Government suggested that the existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area.

#### **Box 6.7: Evidence on the Environment**

The UK Government said: *‘Under paragraph 6 of Schedule 7 to GoWA most environmental functions are devolved. The creation of Natural Resources Wales will require on-going close working relationships between officials in that body and their opposite numbers in England to ensure the delivery of the objectives of UK and Welsh Ministers, and to comply with EU law.’*

The Welsh Government said: *‘The Welsh Ministers already have executive responsibilities for marine conservation, including marine protected sites, and marine licensing in the Welsh inshore area. These responsibilities should be extended to the Welsh offshore area. This would allow the Welsh Ministers, who are the marine planning authority under the Marine and Coastal Act 2009 for both the Welsh inshore and offshore areas, to plan for and manage the whole of Welsh seas more coherently, including fisheries in the offshore for which the Welsh Ministers are already responsible.’*

#### **Assessment**

**6.5.3** We agree that the existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area. This would fit well with our principles of coherence and accountability.

#### **Recommendation**

g. the existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area.

### **6.6 CONCLUSIONS**

**6.6.1** Powers over sewerage should be devolved. On water, an inter-governmental committee ~~and protocol and protocol~~ should be established to set out the appropriate boundaries of competence for the various water company functions ~~and consider cross-border issues~~. The Secretary of State’s existing legislative and executive powers of intervention in relation to water should be removed in favour of the above formal inter-governmental agreement.

Welsh Ministers, and on gaining the necessary competence, introduce legislation that will enable the Welsh Ministers to establish a parallel system to that proposed for England with the Major Infrastructure Planning Unit within the Planning Inspectorate considering both nationally significant infrastructure energy projects in Wales as well as their associated development, but making its recommendations on these projects to Welsh Ministers.”

- 6.6.2** Responsibility for non-renewable energy consents below 500MW should be devolved. Responsibility for development consents for renewable energy projects greater than 50MW (onshore) and offshore (above 1MW) should be devolved to the Welsh Government in order to facilitate achievement of renewable targets. Responsibility for issuing marine licences in Welsh offshore waters should be devolved. Associated Development consents should be rationalised by the two Governments ~~to reduce complexity in the context of improving the handling of nationally significant energy infrastructure projects carried out by the Planning Inspectorate~~. The Welsh Government should receive parity with Scotland and Northern Ireland for the proposed Contracts for Difference (CfD) which will replace Renewables Obligation Certificates from 2017 as part of the wider Electricity Market Reform.
- 6.6.3** There should be a Welsh Crown Estate Commissioner appointed in consultation with the Welsh Government; a Crown Estate office should be established in Wales, subject to normal value for money criteria, to promote the development of the Crown Estate; the existing memorandum between the Crown Estate and Welsh Government should be published and periodically updated; and appropriate emphasis should be given by the Crown Estate to the Welsh supply chain, especially in developing off-shore energy in Wales.
- 6.6.4** The existing executive responsibilities of Welsh Ministers for marine conservation and licensing in the Welsh inshore area should be extended to the Welsh offshore area.
- 6.6.5** ~~In the next chapter, we discuss what changes within the settlement should be made in the area of policing and justice.~~