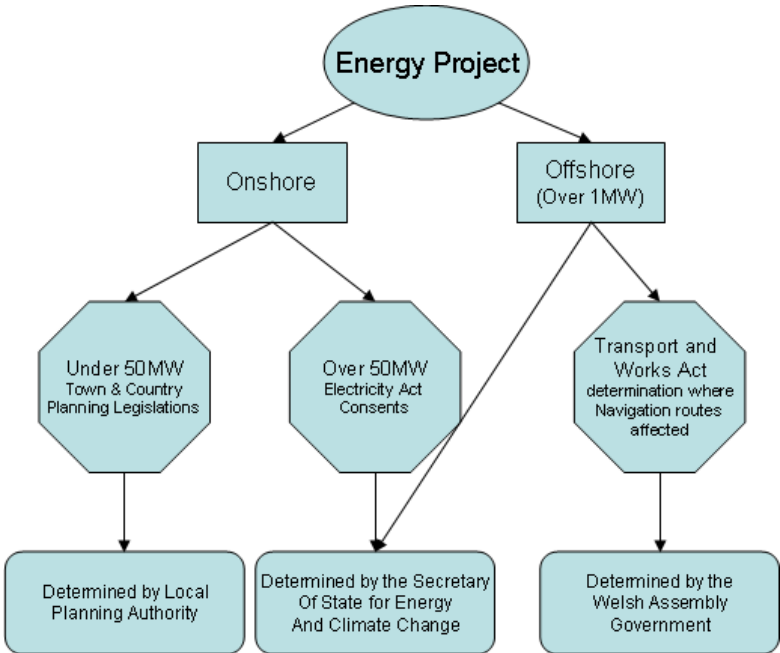


### Technical Annex 3: Devolved legal powers

Energy is largely a reserved matter in Great Britain, i.e. it is largely the responsibility of the UK Government in consultation, where appropriate, with the devolved administrations. However, the Scottish Ministers have executive powers to grant consent for large power stations under Section 36 (S36) etc. of the Electricity Act. WAG has asked for similar executive devolution of S36 etc. powers but this request has been consistently refused over the past five years. In Wales, the granting of S36 etc. consent for power stations with a capacity of more than 50 MW on land and 1 MW at sea remains a matter for DECC determination at the moment. WAG is formally consulted on all such applications, as is the host local authority (LA), and if the host LA objects to the application a public inquiry must be held. S36 etc. consent is not required for generating stations on land with a capacity of 50 MW or less. Such power stations are determined by the local planning authority (LPA) under the town and country planning regime, with any appeal/call in being a matter for the Welsh Ministers and the Planning Inspectorate in Wales.

Projects at sea within our territorial waters can also be consented by the Welsh Ministers under Transport and General Works Act powers. Projects at sea also often require Food and Environment Protection Act licences, which are granted by the Welsh Ministers within territorial waters (except in relation to matters concerning or arising from the exploration for, or production of, petroleum); they may also require Coast Protection Act consent from DEFRA. Most projects at sea also require Crown Estate leases relating to the seabed. Coal mining at current or disused mines requires a licence from the Coal Authority as well as LA planning consents for any land based installations. Undersea carbon storage and associated CO<sub>2</sub> pipeline licences will be a matter for DECC.

The key pathways for determining energy projects in Wales are summarized in the diagram below:



In future, from April 2010, consents in Wales for large power stations (above 50 MW on land and 100 MW at sea) and large power infrastructure projects (including gas

pipelines and electricity grid), but not onshore gas terminals, will normally be a matter for Infrastructure Planning Commission (IPC) determination. However, in making these determinations, the IPC will have to decide the applications in accordance with any relevant UK National Policy Statements (NPSs) unless certain specified circumstances apply. These NPSs are being prepared by DECC and DCLG with WAG being statutory consultees on their drafting.

The NPSs, like all major new policy documents with a spatial planning element, will be subject to an overarching strategic environmental assessment – WAG and a number of Assembly Government sponsored bodies (e.g. the Countryside Council for Wales and the Environment Agency) will be involved in any Wales-related aspects. Note that the legal consent processes for any large Severn tidal power structures have not yet been determined.

Table A3: Proposed consent bodies for electricity installations

Installation size	Current consent body	Future consent body
>50 MW Onshore	Secretary of State for Energy & Climate Change	Infrastructure Planning Commission
<50 MW Onshore	Local authorities	Local authorities
>1 MW Offshore	Secretary of State for Energy & Climate Change Welsh Assembly Government (Under Transport & Works Act)	Infrastructure Planning Commission Marine Management Organisation & Welsh Assembly Government
<1 MW Offshore	Welsh Assembly Government	Marine Management Organisation & Welsh Assembly Government

The Welsh Ministers currently have a number of executive powers and duties that may be relevant to project consents. Energy projects often require environmental impact assessments, appropriate assessments in environmentally sensitive areas covered by the Habitats and Ramsar Directives, environmental permits from EAW, planning consents for associated works such as sub-stations, transport permissions, offer supply chain, economic development and innovation (including WEFO grant, SFI and Finance Wales support) opportunities, FEPA consents for marine operations etc. The extent of devolution in each of these areas is complex, but often the Welsh Ministers will have executive functions in relation to such matters, whether as primary decision maker, appellate body or in some other supervisory capacity.

Welsh Ministers also have significant powers relevant to delivering wider aspects of a low carbon economy such as responsibilities for transport, economic development, skills and education, housing, regeneration and local government.