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Submission to Part II of the Commission on Devolution in Wales (the Silk Commission)

with particular focus on

Devolution of Energy Planning and Consenting Powers



**cyfeillion
y ddaear
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**“Renewable industries are providing the jobs of the future.
DECC appears to be prioritising jobs with good future prospects in England
while focusing on fossil fuel jobs – jobs of the past – in Wales”.**

“Fossil fuels, fossilised economy.”

**“All powers to consent, licence and permit energy developments in Wales
should be devolved to the National Assembly for Wales”**

The Case for Devolution of Energy Planning and Consenting Powers

Introduction

1. Most commentators now agree that the only successful future for wealthy, industrialised countries (such as Wales) is one in which low- and zero-carbon activities are writ large. Indeed, First Minister Carwyn Jones has urged Wales to “lead the way” in creating a low carbon economy¹. David Cameron and Nick Clegg opened the UK Government’s *Carbon Plan* with the words:

“Even in these tough times, moving to a low carbon economy is the right thing to do, for our economy, our society and the planet”²

2. A low carbon future is not only a *desirable* policy goal, it is an outcome which will provide more benefit for those countries in a first-mover position (first mover advantage)^{3,4}. That is, the more rapidly Wales becomes a low carbon (or zero carbon) economy, the bigger will be the economic advantage.
3. Conversely, delays in achieving low- or zero-carbon status will see Wales yet again on the fringes of economic opportunities, scrabbling to play catch-up with its more successful low-carbon competitors.
4. Given the almost universal agreement that moving to a low carbon economy is a desirable policy outcome, the question arises: how can Wales best move to a low carbon economy?
5. This paper examines how Wales benefits from current planning and consenting arrangements in relation to energy and considers how these arrangements impact on Wales’ ability to become a low carbon economy.

Background

6. When the devolved institutions were established, the conditions applied to energy consenting were starkly different.
7. In **Scotland**⁵, the only reserved powers related to:
 - Generation, transmission, distribution and supply of electricity
 - Oil and gas
 - Coal
 - Nuclear energy
 - Energy conservation

¹ BBC, 14 March 2012, [Carwyn Jones hails ‘golden opportunity’ of energy production](#)

² UK Government, December 2011, [The carbon plan: Delivering our low carbon future](#)

³ Lewis JI and Wiser RH, 2007, [Fostering a renewable energy technology industry: An international comparison of wind industry policy support mechanisms](#), Energy Policy 35(3), 1844-1857

⁴ Brandt US and Svendsen GT, 2004, [Switch point and first-move advantage: The case of the wind turbine industry](#)

⁵ Schedule 5 to the *Scotland Act 1998* <http://www.legislation.gov.uk/ukpga/1998/46/schedule/5>

8. In the case of Scotland, powers to consent electricity generating infrastructure greater than 50 MW had already been delegated to the Secretary of State for Scotland under the Electricity Act 1989⁶. As a result they were transferred to the Scottish Parliament upon its establishment.
9. In **Northern Ireland**⁷, the relevant excepted powers are:
 - Nuclear energy
10. In **Wales**, all consents relating to electricity generating infrastructure above 50 MW are non-devolved. This is in addition to all the other fields that are reserved also for Scotland, and others besides (including consenting overhead electricity lines). The nature of the constitutional settlement – with specific areas of competence being devolved, rather than areas being reserved – is primarily responsible for the additional complication in Wales.

Complexity

11. In **Northern Ireland**, any development of 10 MW or greater requires the consent of the Northern Ireland Department of Enterprise, Trade and Investment⁸. Schemes up to 10 MW are consented through the planning system, itself determined by the Department of Environment, which also issues planning permission for projects larger than 10MW.
12. Local authorities in **Scotland** are the consenting bodies for onshore electricity generating infrastructure up to 50 MW; offshore, for all size of applications, that responsibility falls to the Scottish Government Marine Licencing Operations Team⁹. The Scottish Government also has responsibility for all electricity generating infrastructure greater than 50 MW in installed capacity.
13. In comparison, the consenting process is unusually complex in **Wales**.
14. Offshore, the responsibility for issuing Electricity Act consent lies with the Marine Management Organisation (MMO) for all projects between 1 MW and 100 MW in installed capacity. Projects greater than 100 MW are determined by the Major Infrastructure Planning Unit (MIPU), which sits within the Planning Inspectorate. For all projects that lie between 0 and 12 nm offshore, the Welsh Government determines the marine licences, while projects further afield are licenced by MMO (Figure 1).
15. Onshore, as in Scotland, local authorities are the consenting bodies for electricity generating infrastructure up to 50 MW. DECC administers all applications for electricity generating infrastructure greater than 50 MW while planning permission is determined by the Major Infrastructure Planning Unit, which sits within the Planning Inspectorate.

⁶ McEwen *et al.*, January 2010, [Pushing at barriers of devolution: Energy and climate change policy in Scotland](#)

⁷ Schedule 2 to the *Northern Ireland Act 1998*

⁸ DETI, [Consents for the construction, extension or operation of a generating station \(Article 39\)](#)

⁹ Scottish Government, [Marine licencing in Scotland](#)

16. However, because planning policy is fully devolved to Wales there are times when the interests of Wales and those of ‘England and Wales’ may differ. Account of this is taken through the National Policy Statements on planning, passed by Parliament, which take primacy over planning policy determined in Wales.
17. This complexity is likely to be a barrier to companies – particularly renewable energy companies – wishing to do business in Wales. Resolution for this complexity could come about either through devolving further powers or through moving to a reserved system of devolution such as those enjoyed in Scotland and Northern Ireland. There appears to be no logical reason for Wales being treated so differently to the other devolved nations.

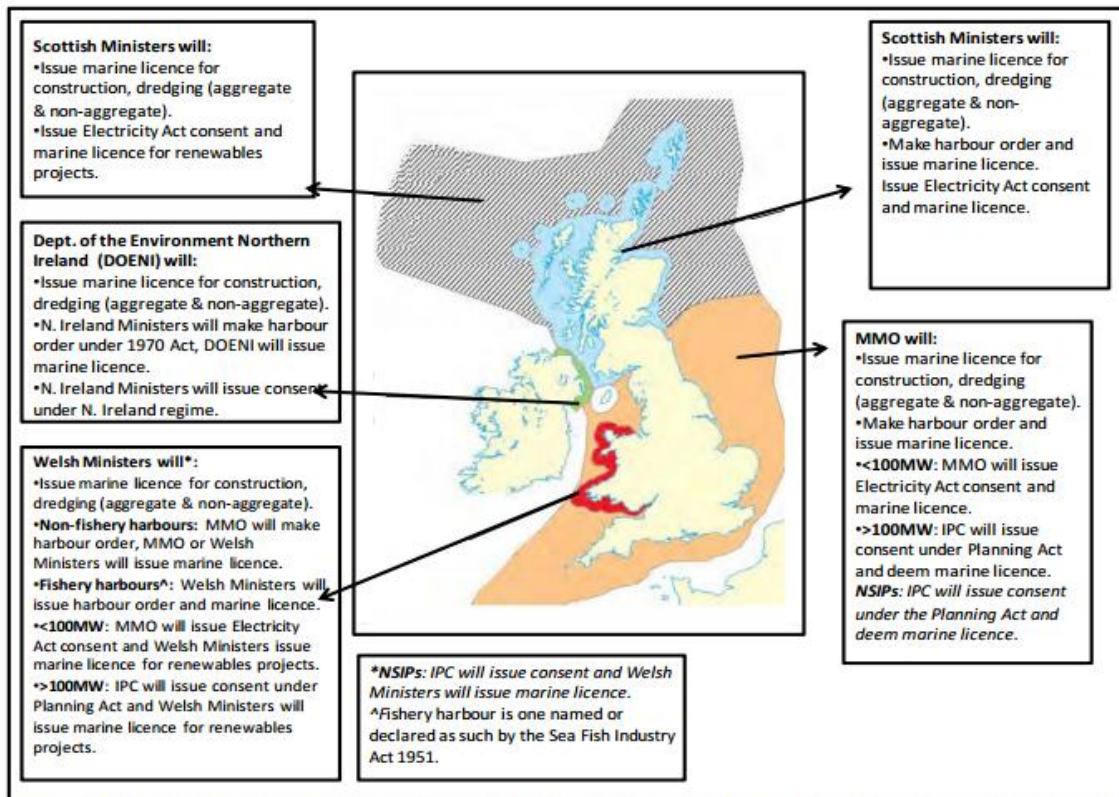


Figure 1. Map showing areas of responsibility for UK devolved administrations. Not to scale. Where NSIP = Nationally Significant Infrastructure Projects. Adapted from (Defra 2009).

Figure 1 Areas of responsibility for the UK administrations¹⁰

The lack of ambition and the political vacuum

18. Energy policy in Wales, while nominally laid out in “A low carbon transition”, is to all practical purposes non-existent – or at least impotent – in Wales:

“we want to maximise the long-term economic benefits, and in particular the job creation potential, for Wales... we want to ensure that communities benefit from energy infrastructure developments...”

¹⁰ Marine Management Organisation, April 2011, [Marine licensing guidance 10: Cross-border working](#)

we want to carefully plan and manage the relationship between energy development and our natural environment”¹¹

19. There are no targets in the document – although this is hardly surprising since the Welsh Government has no legislative or genuine policy levers to pull to make good on targets. One is left to assume that the targets are as in the previous Energy Policy Statement¹²:

“Based on Wales’ natural advantages in areas such as wind and marine renewable resources, our aim will be to renewably generate up to twice as much electricity annually by 2025 as we use today and by 2050, at the latest, be in a position where almost all of our local energy needs, whether for heat, electrical power or vehicle transport, can be met by low carbon electricity production”

20. Current Welsh Government policy is that the wind power ambitions outlined in TAN 8 should be the “upper limit” of wind development in Wales¹³. This policy was re-iterated by Environment Minister John Griffiths at a wind industry event on 30 January 2013¹⁴.

21. The comparison with energy policy in Scotland¹⁵ is rather stark:

“The First Minister wants renewable sources to generate the equivalent of 100 per cent of Scotland's gross annual electricity consumption by 2020. Similarly, a target has been set for renewables sources to provide the equivalent of 11 per cent of Scotland's heat demand by 2020... The Government wants targets to be exceeded rather than merely met, and not to be viewed as a cap on what renewables can deliver”

22. Given the vagueness endemic throughout the Welsh energy policy, the lack of powers to achieve anything substantive and the paucity of highly-skilled staff in the administration, it is hardly surprising that Government rhetoric is a pale comparison of its Scottish counterpart. However, Welsh Government statements that TAN 8 capacities should be the maximum belie an approach to renewables – and the low carbon economy – that lacks ambition compared to the Scottish Government’s recognition that renewables are the only viable energy future.

23. The Welsh Government applies a rigid approach to planning for onshore wind. One consequence of this is that if the public inquiry into wind farms in mid Wales¹⁶ finds in favour of the developments, there will be intense competition amongst the developers for contractors able to install a comparatively large number of installations at one geographic location at one point in time. Scottish planning policy is far more flexible with regard to onshore renewables.

¹¹ Welsh Government, March 2012, [Energy Wales: A low carbon transition](#)

¹² Welsh Assembly Government, March 2010, [A low carbon revolution: The Welsh Assembly Government energy policy statement](#)

¹³ Welsh Government, 17 June 2011, [Written statement: Planning for renewable energy in Wales](#)

¹⁴ John Griffiths’ keynote speech at the Renewable UK event at the Senedd, 30 January 2013

¹⁵ Scottish Government, [Renewables policy](#)

¹⁶ Gov.uk, 23 October 2012, [Public inquiry into mid Wales wind farms](#)

24. The ability of the Scottish Government to set preferential rates of return for investors in Scottish marine renewables has also been beneficial to that industry's development in Scotland¹⁷. Wales' tie to England's Renewable Obligation Certificates has hamstrung the Welsh Government's ability to use any fiscal instruments to incentivise renewable development in Wales.
25. But even accounting for all these factors, something far more significant is going on. Welsh Ministers are not advocates for the renewable sector in Wales. Or at least, for the one sector with mature technology where Wales has a comparative advantage in terms of sites and grid access, Welsh Ministers are silent.
26. This Ministerial silence has created a vacuum, into which a small but vocal group of people opposed to wind turbines has willingly stepped. The discourse on wind energy in Wales has been almost entirely appropriated by anti-wind activists, with Ministers seemingly unwilling to speak in favour of renewable energy.
27. The democratic process has also been subverted. Organisations like Friends of the Earth Cymru who would wish to press the First Minister (whose personal decision was to take on the energy portfolio) for his administration's failures are unable to do so because developments under 50 MW are the responsibility of local authorities while above that threshold they are the responsibility of Whitehall. That leaves the Welsh Government with no responsibility and no accountability.
28. So perhaps the biggest beneficiary of devolution of consenting and planning powers for electricity generating infrastructure would be the level of public debate. At present the Welsh Government tends to evade any calls for accountability with the mantra that this is not a devolved issue. That type of statement cuts the debate dead.
29. Whether the decisions taken would be more or less beneficial to the economy and environment is almost a moot point (although it's difficult to see how progress on renewables could be poorer than at present). It would mean the start of a meaningful discussion on Wales' energy needs and resources. It would also bring accountability home to the politicians who are closest to the electorate in Wales: Assembly Members¹⁸.
30. Finally, the Scottish Government's decision to not consent any new nuclear power stations is also a factor. The renewables industry knows that in Scotland it is not competing with nuclear for a share of low carbon generating infrastructure for the future.
31. A new nuclear power station can be consented for Wylfa, with no input from the National Assembly for Wales and despite the opposition of the Welsh public (more people in Wales are opposed to nuclear power than in favour¹⁹; most people even in Anglesey are opposed to new nuclear development²⁰).

¹⁷ Scottish Renewables, 25 July 2012, [Scottish Renewables statement on DECC Renewables Obligation announcement](#)

¹⁸ ITV, 9 October 2012, [Exclusive ITV poll shows strong support for Assembly rule](#)

¹⁹ Populus, August 2011, [British Science Association poll](#)

²⁰ University of Bangor, 2010, [Public attitudes to new nuclear build](#)

Institutional indifference in Whitehall

- 32. Whitehall could scarcely be less interested in the development of renewable energy in Wales.
- 33. To some extent this indifference is entirely understandable. DECC has responsibility for meeting binding targets under the EU Energy Directive²¹, failure in which endeavour will mean heavy fines. So DECC’s focus is on generating large amounts of renewable energy very rapidly (and in any case by 2020). That means offshore wind farms, principally off the east coast of England (see Figure 2).

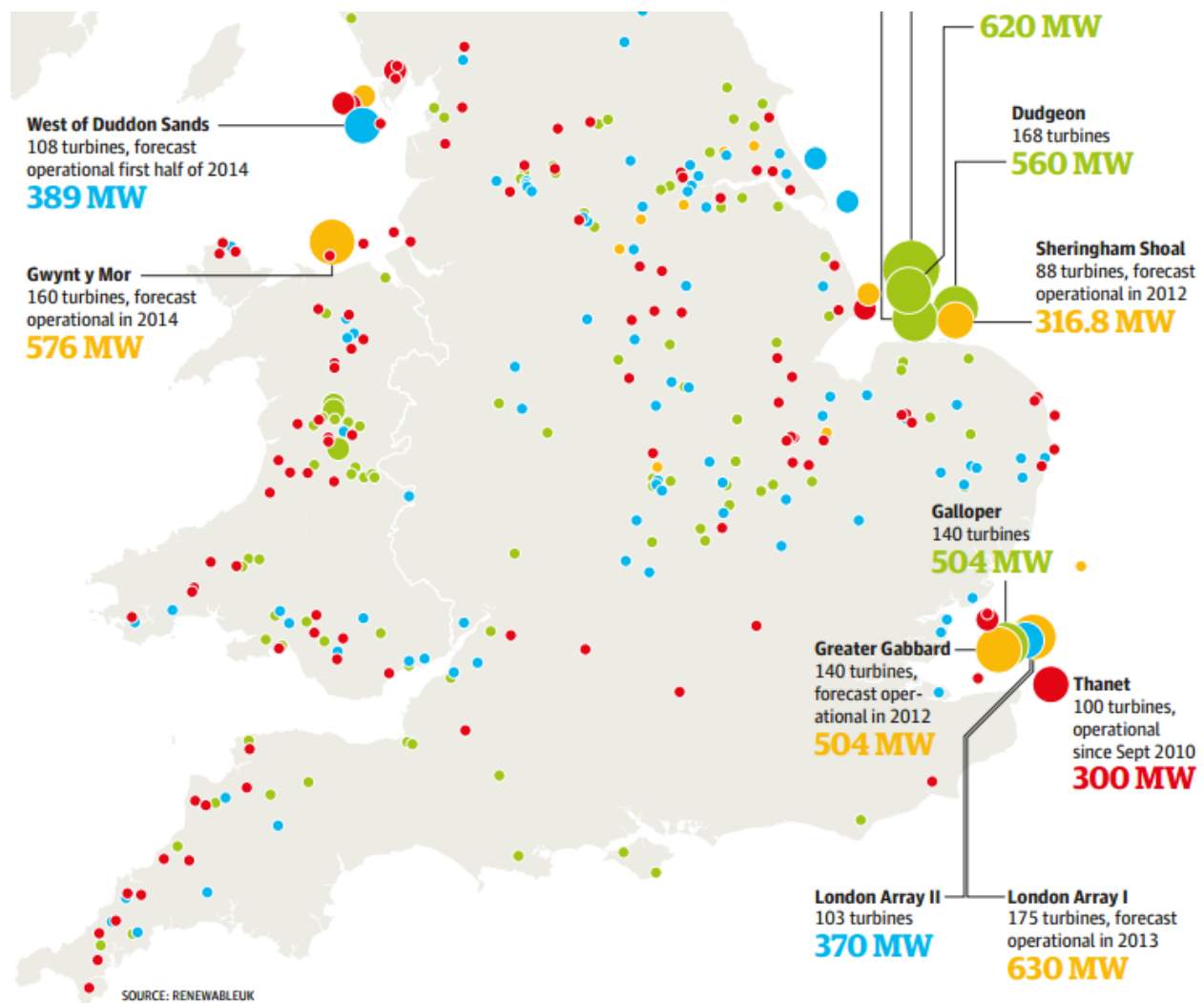


Figure 2 Wind power in Wales and England (larger circles indicate bigger wind farms)²²

- 34. So it’s unsurprising that Wales has lagged so badly behind Scotland; DECC pays no account whatsoever to the Welsh Government’s aspirations. In fact, any Welsh energy policy is rather meaningless given that the IPC and DECC provide the approval framework for (>50 MW) energy infrastructure in Wales, and TAN 8 – Wales’ renewable energy planning policy – is subsidiary to the National Policy Statements on energy.

²¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:en:PDF>

²² See http://image.guardian.co.uk/sys-files/Environment/documents/2012/02/27/UK_Windfarms.pdf for full details

35. A Freedom of Information request sent by Friends of the Earth Cymru to the Department of Energy and Climate Change (DECC) (see Appendix 1) has revealed the following:
- No Permanent Secretary of DECC has ever visited Wales on business
 - Of the 5 Directors General²³ in DECC only two have ever visited Wales on business. The amount of time spent on business in Wales by Directors General works out to be 0.4 days per Director General per year.
36. This pitiful activity of high-level DECC staff in Wales should be put into context of Wales generating 10% of the Wales and England²⁴ total of electricity²⁵ and being responsible for far greater per capita greenhouse gas emissions²⁶ (see below). So Wales should be a significant focus of attention for DECC, rather than of total insignificance.
37. We should also point out that Welsh taxpayers make a full pro-rata financial contribution to the activities of DECC. There is no DECC office in Wales, although there is an office in Aberdeen²⁷ in Scotland even though most energy and climate change functions in Scotland operate through the Scottish Government.

The results of energy policy being determined at Westminster and Whitehall

38. The results of these multiple failings by the UK and Welsh Governments are breath-taking.
39. The first Welsh Government renewable energy target was for Wales to have generated 4TWh of renewable energy by 2010. We actually generated just 1.6TWh – 40% of the targeted amount.
40. Figure 3 shows the rate of progress of new renewable energy installations²⁸ in each of the four UK countries since 2003.
41. Over the eight years 2003 to 2011, wind, wave and solar capacity in England has increased at more than six-fold the rate in Wales. The increase in Northern Ireland and Scotland has been nearly four-fold.
42. The total renewable energy capacity²⁹ in 2011 in Wales was 857 MW; in Scotland it was 4,810 MW³⁰, or 5.6 times as much.

²³ Gov.uk, undated, [Our management](#)

²⁴ The territory for which DECC is responsible

²⁵ DECC, 20 December 2012, [Electricity generation and supply figures for Scotland, Wales, Northern Ireland and England, 2008 to 2011](#), page 56

²⁶ National Assembly for Wales, January 2012, [Greenhouse gas emissions in Wales](#)

²⁷ Gov.uk, undated, [Aberdeen office](#)

²⁸ Wind, wave and solar. Most of this is accounted for by wind.

²⁹ Hydropower plus non-thermal renewables

³⁰ Gov.uk, September 2012, [Renewable electricity in Scotland, Wales, Northern Ireland and the regions of England in 2011](#), p.50

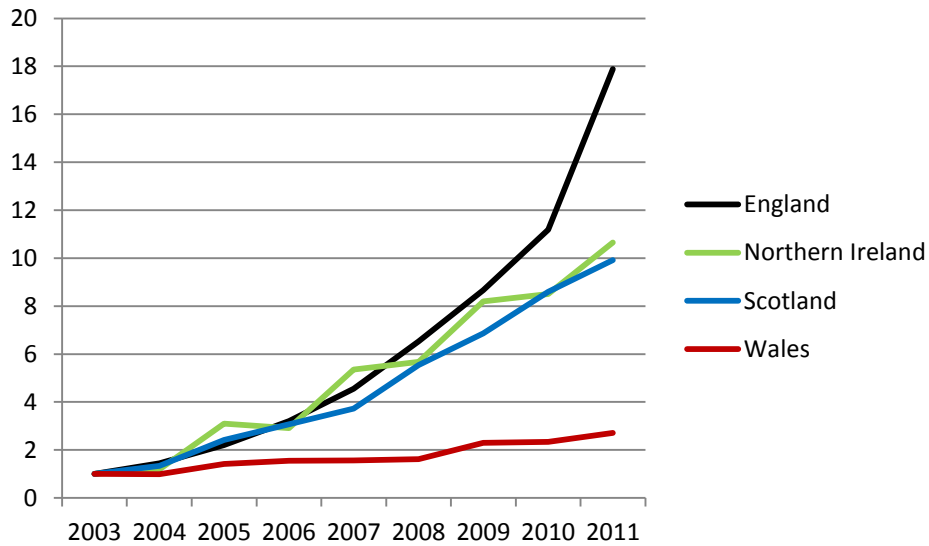


Figure 3 Rate of increase in wind, wave and solar capacity. 2003 is reference year (value = 1)³¹

43. Wales has long suffered the consequences of fossil fuel power stations being developed in Wales. Even without the advent of Pembroke power station³², Welsh per capita greenhouse gas emissions in 2009 stood at 14.2 tonnes (one of the highest figures in the world); the equivalent emissions for Scotland are 9.3 tonnes per capita, and 8.4 for England³³. Per capita greenhouse gas emissions in Wales are 70% greater than in England (largely a result of fossil fuel electricity generation). Energy supply is responsible for 38 per cent of Welsh emissions³⁴.

44. In 2011, Wales generated a higher per capita ratio of electricity from fossil fuels than the other UK countries (see Table 1).

Table 1 Electricity generation from fossil fuels³⁵ in 2011³⁶

Country	Coal (GWh)	Gas (GWh)	Total fossil (GWh)	Per capita (kWh per capita)
Wales	6,170	10,670	16,840	5.6
England	90,179	122,715	212,894	4.1
Northern Ireland	1,455	5,378	6,833	3.8
Scotland	10,779	8,052	18,831	3.6

45. So Wales already has a poor historical record of fossil fuel generation. This record will be further disadvantaged in future statistics when Pembroke power station’s contribution to per capita fossil fuel generation is realized.

³¹ Data from <https://restats.decc.gov.uk/cms/historic-regional-statistics/>

³² A 2 GW power station that started generation in late 2012

³³ National Assembly for Wales, January 2012, [Greenhouse gas emissions in Wales](#), p.12

³⁴ Ibid, p.27

³⁵ Excluding oil, which accounts for less than 0.3% of UK electricity generation

³⁶ Department of Energy and Climate Change, [Electricity generation and supply figures for Scotland, Wales, Northern Ireland and England, 2008 to 2011](#), p.58

46. In 2011, 13.4% of the electricity generated in Wales was exported to England³⁷.

47. There has been a much higher installation rate of non-renewable electricity generating infrastructure in Wales recently than any other UK country (Figure 4). The installation rate is not far off an order of magnitude greater than in Scotland. This non-renewable infrastructure necessarily has a limited life-span and is effectively 'jobs of the past'. Fossil fuels, fossilised economy.

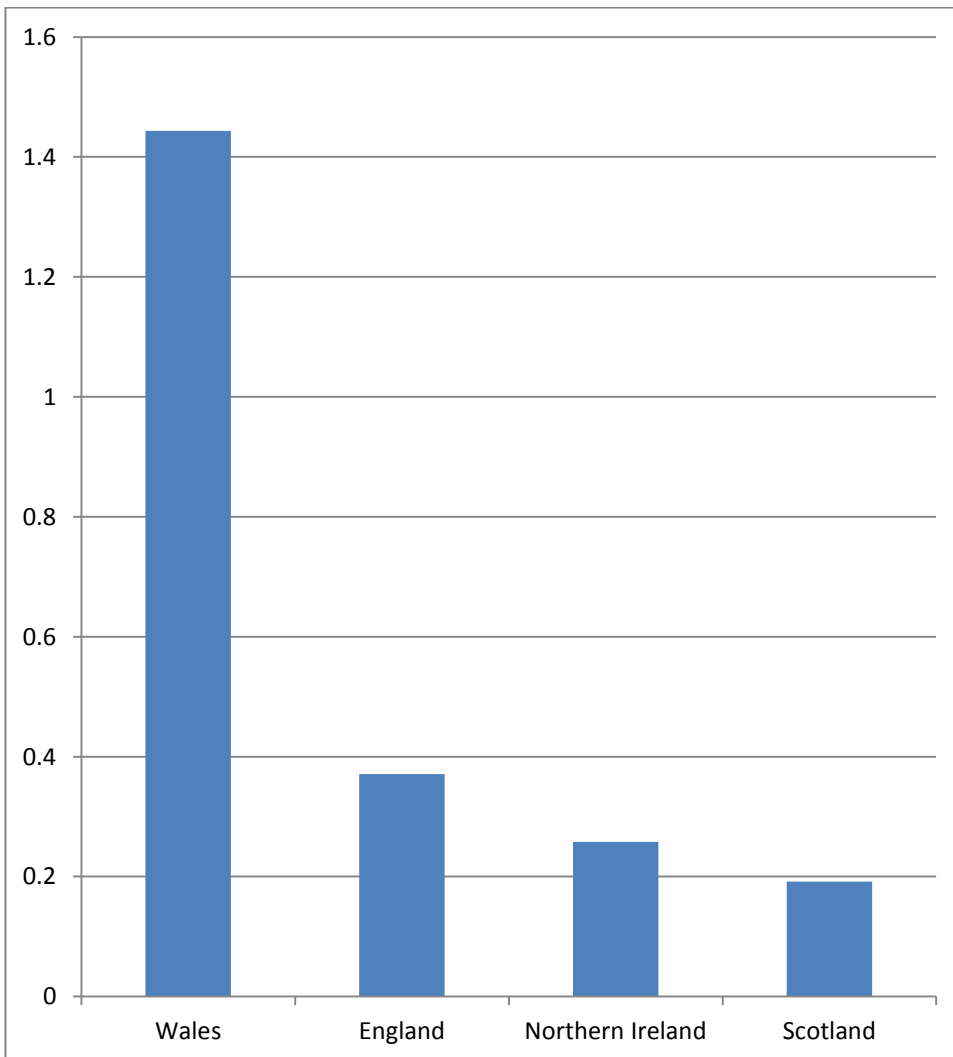


Figure 4 Installations of non-renewable³⁸ electricity generation infrastructure 2005-2012 inclusive (MW per 1,000 head of population)³⁹

³⁷ Department of Energy and Climate Change, [Electricity generation and supply figures for Scotland, Wales, Northern Ireland and England, 2008 to 2011](#), p.56

³⁸ Includes biomass for generating electricity – a use of biomass that is among the most wasteful (typically 25% efficiency). See <http://hes.decc.gov.uk/consultation/download/index-32178.pdf> p.105

³⁹ Data from <https://www.og.decc.gov.uk/EIP/pages/recent.htm> and <http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Applications-Database>

48. Without the powers to consent and allow planning permission for large electricity generating infrastructure, the Welsh Government is unable to determine the appropriateness of yet more non-renewable electricity generating infrastructure being developed in Wales.
49. This also means that DECC can continue to impose new fossil fuel infrastructure in Wales, overriding Welsh concerns about greenhouse gas emissions, biodiversity impacts and local air pollution.
50. In addition, consent for developing certain fossil fuel extraction facilities (notably shale gas) is delivered by DECC, not the Welsh Government. This leaves Wales unable to restrict the development of certain carbon-intensive fossil fuel infrastructure. In 2012, Carwyn Jones noted that matters relating to fracking:
- “are primarily for the Westminster Government, but I can assure Members that the approach that we would take to fracking would be one based on the precautionary principle”*⁴⁰
51. Given that the Welsh Government recognises that a low-carbon future is a desirable policy outcome, one could foresee an energy policy for Wales based around sequential closure of the most-polluting fossil-fuelled electricity generating infrastructure as renewable plant were installed. This would mean that new electricity-generating infrastructure would lead to the replacement of existing less carbon-efficient plant⁴¹.
52. Such a policy is clearly impossible under current arrangements.
53. Renewable industries are providing the jobs of the future. DECC appears to be prioritising jobs with good future prospects in England while focusing on fossil fuel jobs – jobs of the past – in Wales. Fossil fuels, fossilised economy.

Conclusions

54. 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 challenge now is to avoid Wales becoming amongst the “last-mover” countries (sections 1-3).
55. 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 (sections 11-17).

⁴⁰ Cofnod, 6 March 2012, [Questions to the First Minister: Question 15](#)

⁴¹ So, for example, new gas-fired power stations would only be permitted if they resulted in the closure of an equivalent rating of coal-fired power stations. Meanwhile, gas-fired power stations would progressively be retired as more renewable electricity generation came on-stream.

56. The absence of planning and consenting powers means that energy policy in Wales is almost entirely impotent (sections 18-19). Planning Policy Wales – in relation to energy developments – is entirely subsidiary to the UK Planning Policy Statements (section 34).
57. Even allowing for the impotence of Welsh energy policy, the level of stated ambition is difficult to elucidate (section 19) and is set out in terms of *restricting* renewable energy developments (sections 20 and 22) – in stark contrast to policy in Scotland (section 21).
58. Welsh Ministers are hardly eloquent and vocal supporters of renewables in Wales (section 25). In some cases their statements appear to demonstrate quite the reverse⁴². This failure to promote renewables – particularly wind – has the triple disbenefit of :
- Allowing the anti-wind minority to dominate the discourse (section 26)
 - Subverting due democratic process (section 27)
 - Stifling public debate (sections 28-29)
59. The ability of Scotland to set differential financial rates of return for investors in marine renewables has been a major advantage to that sector's development in Scotland (section 24). Wales has been directly disadvantaged in relation to Scotland as a result of being tied to England's Renewable Obligation Certificates.
60. The ability of Scotland to refuse to consent new nuclear power stations has also improved the outlook for renewables in Scotland (section 30). Welsh democratic institutions have no input into nuclear decisions, despite a clear plurality of opposition both locally and nationally (section 31).
61. Welsh energy policy is to all intents and purposes meaningless (section 34) and ignored by DECC (section 33), as confirmed by high-level interest (or lack thereof) in Wales (section 35). This is despite Wales making a larger-than-pro-rata contribution to both electricity generation and greenhouse gas emissions (sections 36-37 and 43).
62. As a result of these factors we missed our first renewable energy production target by 60% (section 39).
63. New renewables are being installed 6-fold faster in England than in Wales, and 4-fold faster in Scotland and Northern Ireland (section 41).
64. Installed renewable energy capacity is less than $\frac{1}{5}$ of that in Scotland (section 42).
65. Wales provides a far higher proportion of electricity from fossil fuel than other UK countries, and this proportion is set to increase substantially (sections 44-47). These are 'jobs of the past' for Wales, unlike the renewable 'jobs of the future' that DECC appears to prioritise in England.
66. DECC's control of planning and consenting means that Wales has no say in fossil fuel extraction and generating infrastructure (sections 48-52). Recent evidence of Whitehall's consenting priorities

⁴² Syniadau, 14 July 2011, [Flapping in the wind](#)

suggests that Wales will continue to bear a heavy burden of fossil fuel infrastructure until the powers are devolved. This non-renewable infrastructure necessarily has a limited life-span and is effectively 'jobs of the past'. Fossil fuels, fossilised economy.

67. 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.