

Infrastructure (Wales) Bill

Summary of written evidence

September 2023



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This brief provides a high level summary of written evidence received in response to the Climate Change, Environment and Infrastructure Committee's (the Committee) consultation on the Infrastructure (Wales) Bill. It is not intended to be exhaustive and links to the full responses submitted can be found at Annex 1.



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Summary of evidence

Overall, stakeholders, including the National Infrastructure Commission for Wales (NICW) and the Future Generations Commissioner, **support the Bill**. They agree there is a need for a unified consenting process. The Royal Town Planning Institute (RTPI) highlights it:

*...has long called for a regulatory framework to enable an effective infrastructure consenting regime... on large infrastructure projects, providing structure and clarity... The recent rise in renewable energy applications on the **Developments of National Significance (DNS)** register is one indicator of the increasing volume of infrastructure applications coming down the line.*

Wales and West Utilities suggests the current DNS process is “not fit for purpose” and puts Wales at a disadvantage compared to other parts of the UK. Anglesey County Council says **the current process is lengthy and inefficient** which creates uncertainty for both the consenting and delivery of projects. It recognises the Bill as an opportunity to “provide certainty, consistency, require applications of quality as well as require [an] appropriate level of public/community engagement”.

Although all respondents support the introduction of a new consenting regime, the **need for clarity on the transition from current DNS arrangements** is a recurring theme throughout the evidence. Anglesey County Council highlights the need for clarity, for both developers and affected communities, that any pre-application work already undertaken when the new regime is introduced remains valid.

While supportive of the Bill, Professor Hannah Hickman, of the University of the West of England, warns “there is a careful balance to be struck between the quest for speed of consent and its potential consequences for future delivery”.

A lack of detail on the face of the Bill

The Minister for Climate Change, Julie James MS, acknowledged in the **Senedd on 13 June** that much of the detail of the new process will be left to subordinate legislation. She argued this was appropriate to allow flexibility.

When questioned on the issue during an initial evidence session on the Bill in July, the Minister **told the Committee**:

...we want to be able to keep it up to date, and we want to be able to make sure that we take advantage of emerging technologies... we don't

want to get ourselves into a mess where we've got a process Bill that ties us to particular things that, within even the life of this Senedd, will be just out of date...

The Minister **went on to say:**

...there will be a series of processes [that] will need to be refreshed with probably quite a lot of regularity, particularly in the early days.

The Welsh Government has since published a **statement of policy intent** for the subordinate legislation to be made under the Bill.

Natural Resources Wales (NRW) suggests it is difficult to judge whether the Bill will achieve its policy intention. It says the “framework nature of the Bill” makes it challenging to understand the full implications on its statutory functions.

NFU Cymru agrees that **more detail should be provided on the face of the Bill**. It suggests a similar approach should be taken to that of the **Planning Act 2008** (the 2008 Act). The 2008 Act introduced a new consenting regime for major infrastructure projects in England and non-devolved projects in Wales. NFU Cymru suggests the 2008 Act includes more detail and a similar approach should be taken for the Bill.

The level of detail reserved for subordinate legislation is described as “one of the Bill’s key failings” by Bute Energy.

Concerns that current resources are insufficient to support the new process

Many stakeholders express concern that **current resources will be unable to support the new process**. The RTPi says:

*...LPA departments are significantly underfunded, and research shows that planning services are suffering most severely of all local government services due to budget cuts... we believe that resourcing and expertise in the public sector, including Welsh Government, PEDW [**Planning and Environment Decisions Wales**], LPAs [local planning authorities] and local authorities more widely e.g. highways departments, NRW and other statutory consultees, is currently a key barrier to the timely decision making and delivery of projects...*

The National Trust, Marine Conservation Society and Anglesey County Council also raise concerns over resources. Newport City Council highlights that projects being captured by the new consenting process would take “fees away from LPAs in the first instance and yet [the process] requires significant [input] from them”.

NRW believes it is essential for **guidance and training** to be provided for all participants in the new process to enable its successful implementation. EDF Energy **suggests a central resource of experts** accessible to LPAs, NRW and developers as a solution. It says it is unrealistic for all LPAs to have the necessary in-house expertise and suggests a “pool of experts operating on a full cost recovery basis is potentially more cost effective”.

During the Committee’s evidence session in July, the Minister for Climate Change **outlined that** the Welsh Government encourages local authorities to share expertise and does “provide some support to authorities if they do have something that they’ve never dealt with before”. She suggested LPAs “should have enough resource”.

General support for Significant Infrastructure Project (SIP) categories

Stakeholders generally supported the categories of SIP included within the Bill. However the **absence of any reference to hydrogen projects** is raised by the RTPI and a number of stakeholders in the energy sector, namely Bute Energy, RWE Renewables and Ynni Glan. Wales and West Utilities describes this as a missed opportunity.

Professor Hannah Hickman highlights that **energy storage** schemes (with the exception of liquid gas storage) are not defined within the Bill. She suggests that “energy storage is going to become more important, so this may be an omission”. Newport City Council calls for energy storage to be “explicitly excluded” for the avoidance of doubt.

Pembrokeshire County Council supports **LPAs determining energy generation applications under 50 Megawatts (MW)**. The Bill would see energy generation projects of between 10-49MW, currently consented through the DNS regime, be consented by LPAs rather than through the new consenting process. The Campaign for the Protection of Rural Wales (CPRW) highlights the impact this may have on LPA resources.

Defining “significant”

Professor Hannah Hickman highlights that **neither the Bill nor the Explanatory Memorandum (EM) defines ‘significant’**. She advocates for a definition to be included given that some thresholds within the Bill relate to scale of operation, some to capacity and some to measures such as length. She questions whether

‘significant’ should take account of third party impact or the impact of the service a project seeks to deliver.

This point is echoed by the RTPI which calls for further clarity on the evidence behind the thresholds. It says this would be useful to understand “if consideration was given to scale and impact, rather than a standard measure”.

Optional thresholds

The RTPI questions whether the fact that the Welsh Government intends to set out a tier of **optional SIP thresholds and criteria in guidance will cause ambiguity in the system**. NRW says this needs to be based “on clear and consistent criteria” as all parties should expect “a reasonable degree of certainty over which consenting regime is appropriate for... any given infrastructure project”.

Powers to direct

The **level of discretion provided to the Welsh Ministers** to direct that a project which otherwise wouldn’t be captured by the process is a SIP, and vice versa, is a concern for NFU Cymru. It highlights a lack of any criteria (on the face of the Bill) governing the circumstances as to when these powers may be used.

RWE Renewables calls for a statutory deadline for a direction to be made to be included in the Bill. It highlights that the 2008 Act includes such a **provision**. Llanarthne and Area Community Pylon Group agrees this is needed.

The discretion provided by the Bill is however welcomed by Transport for Wales (TfW). It suggests many of its projects would be unlikely to trigger the definition of a SIP but as these are often viewed as highly complex and of relatively high cost to the public it may be desirable that they are treated as such. The Association of British Ports (ABP) also supports such flexibility.

Mixed views on a 52 week statutory timeframe for deciding applications

TfW welcomes the introduction of a 52 week timeframe, as does Marine Energy Wales. The FSB notes the importance of **ensuring resources are in place to meet such timeframes**.

ScottishPower Renewables argues the 52 week period should be **a limit not a target** and that some smaller applications can be decided in a much quicker timeframe. Conversely, the Wildlife Trusts Wales believes “there is a very strong

argument... for **more time to be devoted to the consideration of major infrastructure projects**". It says "success or otherwise [should not be] expressed solely in terms of the speed with which such consents are given out".

Ashfords LLP expresses concern from its experience of dealing with such projects that failure to meet the 52 week timeframe will be a regular occurrence. Although the Bill provides for the Welsh Ministers to extend this timeframe, the Crown Estate suggests **clarity is needed on the maximum length of time this can be extended for**.

Bute Energy highlights that under the Nationally Significant Infrastructure Projects (NSIP) consenting process (established by the 2008 Act), if the Secretary of State extends the deadline for determining an application (following receipt of an Inspector's report), then a statement must be made to Parliament setting a new deadline. It argues this gives elected representatives an opportunity to scrutinise such decisions and that the Bill should include a similar requirement. It suggests the current requirement in the Bill for the Welsh Ministers to report performance against the 52 week timeframe to the Senedd annually is insufficient.

Stages of the process

Bute Energy also argues the Bill should include **statutory timeframes for each stage of the process**, as is included in the 2008 Act.

Reference to the 2008 Act is also made by a number of stakeholders in relation to validating an application. Kelvin MacDonald, a Senior Visting Fellow at Cambridge University, outlines that section 55 of the 2008 Act allows an Inspector to consider whether the material submitted is comprehensive enough to allow a meaningful examination to take place. He suggests a similar provision in the Bill would be useful.

RWE Renewables argues for the inclusion of a **statutory time period for the validation of applications**. This is supported by Lightsource, ABP and NFU Cymru, which argues this time period should be set at 28 days.

Confusion over the status and hierarchy of planning policies

The Bill provides that applications must be decided in accordance with any infrastructure policy statement relating to the type of development to which the application relates the National Development Framework (NDF) (currently **Future Wales**) where relevant and the Welsh Ministers' marine plan (currently the **Welsh**

National Marine Plan) where relevant. Where a provision in a relevant policy statement is incompatible with provision in the NDF or Marine Plan it must be decided in accordance with the relevant policy statement.

Kelvin MacDonald suggests this is **one of the most important parts of the Bill, but one which risks leading to confusion and challenge in practice**. He highlights that although policy statements will take precedence, the Bill makes no provision as to what these will look like or **the process by which they would be adopted**. The Bill would not require these statements to be approved by the Senedd. He suggests that “given the importance of these documents, the Committee may wish to consider whether such a requirement should be on the face of the Bill”.

Similarly, the RSPB says:

...it does not appear that [infrastructure policy statements] will be subject to any kind of public consultation, sustainability appraisal or scrutiny by the Senedd (as national policy statements are in the UK Parliament) but simply designated by Ministers.

This view is echoed by the National Trust, while the RTPi says it is important such statements do not undermine the NDF as the established national policy. The Welsh Local Government Association (WLGA) and Anglesey County Council question where Strategic Development Plans (SDPs) currently under development will sit.

Professor Hannah Hickman suggests the Welsh Government should **clarify what policy statements are being planned**. The Minister for Climate Change previously told the Committee the Welsh Government **was not currently preparing any such statements** as it was not aware of any policy gaps. However Kelvin MacDonald suggests:

...a number of categories of SIPs, such as... radioactive waste geological disposal are not covered [by the NDF] in policy terms. Therefore, unless a comprehensive set of infrastructure policy statements are produced, there will be a policy void.

There could also be a policy void if Welsh Ministers exercised their powers... to bring other schemes into the regime of a type for which no infrastructure policy statement existed.

Mixed views on the discretion provided to Examining Authorities

NFU Cymru expresses concerns over the discretion given by the Bill for the

Examining Authority to decide which form the examination of an application will take – written procedures, a hearing or inquiry. RWE Renewables says this will make it **difficult for applicants to gauge upfront the likely cost and resource requirements** of the new regime.

Meanwhile the ABP welcomes this discretion, as does the RSPB, although it warns the **method of examination needs to be proportionate and appropriate** to the issues under discussion

No consensus on who should be the decision maker

RWE Renewables welcomes the provisions in the Bill which would allow for either the Examining Authority or the Welsh Ministers to make the decision on an application for Infrastructure Consent. It believes this would **enable decisions on less complex applications to be made earlier** than the 52 week decision deadline. The National Grid agrees with this point.

The RSPB says the Welsh Ministers should not restrict “their role to policy-making, but retain the final say on SIPs, as they carry the **political accountability** for the consent”. NFU Cymru suggests the Examining Authority should “report and recommend on all applications... and leave all final decisions to Welsh Ministers”.

Anglesey County Council suggest the process should allow for a LPA to raise an objection where they consider the use of powers to allow the Examining Authority to make a decision would be inappropriate.

The potential need for enforcement action is a concern for LPAs

The RTPi says that while the number of enforcement cases is anticipated to be minimal, “it is important to recognise **the potential magnitude of costs and officer time at the enforcement stage for LPAs**”.

Newport City Council has concerns over the potential need for enforcement action. As does Anglesey County Council, which says:

Compliance with terms of this type of consent is very important and extends potentially over considerable time. This raises considerable resourcing issues as it could... need significant technical input for the Council to be able to take effective steps to ensure compliance or [enforce] remedial action by a developer or subsequent operator.

Lessons should be learned from similar legislation in England

RWE Renewables highlights the UK government is **carrying out a review** of the 2008 Act and has recently consulted on operational reforms as part of its **NSIP Action Plan**. It suggests there are a number of lessons which can be drawn from in designing and implementing the new SIP regime in Wales.

Professor Hannah Hickman echoes this point. She says research into the regime in England has shown a considerable number of secondary consents and licenses are still required to enable a development to proceed to construction – which lead to delays and further costs.

Cross-border projects

Several stakeholders also highlight the potential impact on developers with cross-border projects. Lightsource bp suggests there is currently “insufficient detail on how cross-border projects would be consented and **how the... regimes on each side of the [border] will interact**”.

Kelvin MacDonald says applicants may be faced with slightly different requirements and procedures for the same class of scheme in Wales as opposed to in England.

The new regime should ensure environmental protections are upheld

The Bat Conservation Trust says **the streamlining of the consenting process “cannot be at the cost of reduced environmental assessment** or less robust environmental protections”. The CPRW and Pembrokeshire Coast National Park Authority (PCNPA) share these views.

Kelvin MacDonald highlights that environmental permits are omitted from the Bill but questions whether these permitting regimes should be brought into the new regime to achieve greater coherence and efficiency. He says:

This reflection is drawn in part from my own experience of dealing with applications [in England] in which delays by Natural England or the Environment Agency in issuing such permits can lead to uncertainty as to whether the Examining Authorities recommendation is robust.

The importance of involving affected communities

The NICW and Future Generations Commissioner call for the role of communities

in the process to be strengthened through the Bill. In its response, Planning Aid Wales highlights the matters most commonly raised by members of the public accessing its services in relation to large scale infrastructure projects. This includes a feeling that “hands are tied” by the time the public become aware of a project and a feeling of being unable to fully participate due to complexity.

Solar Energy UK highlights that the detail of how **pre-application consultation** should be carried out by developers will be set out in regulations. It says this is “unhelpful” and asks for more detail on the face of the Bill.

One member of the public responding to the Committee’s consultation suggests “consultation fatigue” should be considered. They state:

...whilst a project may exceed the threshold and be designated [a SIP], that does not necessarily mean that extensive engagement is required- not least if it is development [already] designated within [the NDF]...

Annex 1 – Consultation responses

Ashfords LLP	Newport City Council
Associated British Ports	National Farmers Union (NFU)Cymru
Association for Consultancy and Engineering Wales	National Infrastructure Commission for Wales and the Future Generations Commissioner
Bat Conservation Trust	Pembrokeshire Coast National Park Authority
Bute Energy	Pembrokeshire County Council
Campaign for the Protection of Rural Wales	Planning Aid Wales
Cwmni Eginio	Public Health Wales
Design Commission for Wales	RenewableUK Cymru
EDF Energy	Royal Society for the Protection of Birds (RSPB) Cymru
Federation of Small Business Wales	Royal Town Planning Institute (RTPI) Cymru
Professor Hannah Hickman UWE	RWE Renewables
Individual	ScottishPower Renewables
Individual	Solar Energy UK
Individual	SP Energy Networks
Isle of Anglesey County Council	Statkraft UK
Kelvin MacDonald	The Central Association of Agricultural Valuers (CAAV)
Lightsource bp	The Crown Estate
Llanarthne and Area Community Pylon Group	Transport for Wales
MaresConnect Limited	Wales & West Utilities
Marine Conservation Society	Welsh Local Government Association
Marine Energy Wales	Welsh Water/ Dwr Cymru
National Grid Electricity Distribution	Wildlife Trusts Wales
National Trust Cymru	Ynni Glân
Natural Resources Wales	
Network Rail	