

Infrastructure 23, The Central Association of Agricultural Valuers (CAAV)

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Cymdeithas Ganalog y Priswyr Amaethyddol | Evidence from The Central Association of Agricultural Valuers (CAAV)

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

We agree with the general principles of the Bill and see there is benefit in aligning legislation to dovetail with the Planning Act 2008, creating a more coherent and consistent consenting regime.

Noting that much of the detail around procedure will be the subject of subordinate legislation, we would ask that effort is given to ensure as much consistency as possible between the English and Welsh regimes – this will not only assist acquiring authorities, but also those affected by a scheme and the professionals advising them.

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

See our response to final question, including whether underground electricity cables should be a SIC, such that all cables qualify, irrespective of whether they are to be installed underground or overground.

Part 2 - Requirement for infrastructure consent

See our response to the final question below.

Part 3 - Applying for infrastructure consent

No comment.

Part 4 - Examining applications

No comment.

Part 5 - Deciding applications for infrastructure consent

No comment but see answer to Part 6.

Part 6 - Infrastructure consent orders

There may be benefit in aligning the consent process to reflect the provisions of the current Levelling Up and Regeneration Bill, as and when enacted, such that conditional consent may be given for a scheme.

Part 7 - Enforcement

No comment.

Part 8 - Supplementary functions

No comment.

Part 9 - General provisions

No comment.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

With the expected substantial increase in the volume of infrastructure work will come the need for the corresponding professional skills in all disciplines needed to deliver this effectively, including the satisfactory achievement of rights over land with the fair treatment of all parties. In some cases, this work has been found to be unnecessarily contentious and attritional, deterring valuers and others from this important work. It is important that the legislation and guidance encourage the more positive and considerate approach to what can often be a very challenging period for people's lives, houses, businesses and farms. Without the necessary resources for this, the outcome is likely to be yet more difficult and contentious.

Compulsory purchase is seen as a technically complex area of work. This is not a problem unique to Wales, with the UK as a whole seeing unprecedented infrastructure work being promoted, but with insufficient willing and experienced professionals to do the work necessary for delivery. The Planning Act 2008, having been implemented for a lengthy period, still sees many professionals unfamiliar

with its provisions and use. The difficulty with resources is not due to the Bill itself, but the unprecedented volume of infrastructure work coming forward.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

No comment.

Are any unintended consequences likely to arise from the Bill?

As mentioned at question on potential barriers, pressure on limited resources is a key constraint. As seen with PINS for NSIPs, additional resources have been recruited in an effort to meet the increased volume of applications. However, Local Authorities and other key stakeholders, such as Natural Resources Wales, may have insufficient resources.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

No comment.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

DRAFTING IN BILL:

There are some improvements that we would suggest in the Bill in respect of compensation where rights are exercised over land. The definitions of 'damage' appear in section 105(5) and section 122(10) (however, in other provisions in the Bill 'loss or damage' is used). We feel that it would be beneficial to make it clear that compensation would be payable in respect of 'damage and/or loss'. The term 'damage' may be construed narrowly and so only providing compensation when physical damage is caused to land, property or other physical assets. Providing also for 'loss' enables a party affected by a scheme to also claim for other matters, such as, for example, crop loss.

PROMOTING USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

In section 105(6), it states that disputes over compensation should be referred to the Upper Tribunal. While recognising the important and established role the Tribunal has in such matters, we would welcome provisions in the Bill that encourage parties to consider the use of ADR. The difficulty for parties who solely

rely on the Tribunal for disputes is that of cost and time – the costs of making a reference in Tribunal will often be prohibitive to many, seeing an imbalance of power in favour of those with greater financial resources (which often is the acquirer, who is more likely to have the resources to fund a Tribunal reference). ADR, whether arbitration, expert determination or mediation, can often be faster, cheaper and more effective than a full Tribunal approach more suitable to large scale cases.

The general direction of travel in many land compensation disputes is seeing an increased emphasis on the use of ADR. This has been seen recently in the telecommunications industry, with the Product Security and Telecommunications Infrastructure Act 2022 amending the Electronic Communications Code (Schedule 3A, Communications Act 2003) to encourage parties to consider ADR before making a reference to Tribunal. Similarly, the Electricity Transmission (Compensation) Act 2023 is to see a task force created to design and propose ADR for such cases which would not then need to reach the Upper Tribunal.

RECOGNISE UNDERGROUND ELECTRICITY CABLES

Finally, while noting that the Planning Act 2008 does not contain powers for underground electricity cables (except for limited circumstances associated to energy generation schemes) in the same way as the Bill, we see there would be benefit in such a provision being included. This would provide electricity licence holders with one single consenting regime, irrespective of whether the lines were to be overhead or buried (noting that some schemes see a combination of both). With the volume of transmission and distribution lines needing to be installed, this consistency in approach would likely assist delivery.
