

Infrastructure 34, Individual

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 Unigolyn | Evidence from Individual

14 August 2023

Via email: SeneddClimate@senedd.wales

Dear members of the Climate Change, Environment, and Infrastructure Committee

Consultation: Infrastructure (Wales) Bill

Firstly, thank you for running this consultation on the draft Infrastructure (Wales Bill). It is important and useful that such tasks are undertaken both in a timely and robust manner. As is the intention of the Bill, this legislation should be the framework for the process to grow from and also stand the test of time – opposed to periodically updating/changing legislation (as per the 2016 introduction of the DNS process which this Bill will replace in time).

In composing my response, I have had regard to the draft Bill and the corresponding details, including the explanatory memorandum. Furthermore, in addition to the discussion had during the publication of the draft Bill, I have also listened to your Evidence Session with the Minister for Climate Change on 6th July 2023 and look forward to the next sessions, the next of which being on 13th September 2023.

I trust that the enclosed is useful in formulating your response to the Welsh Government. The views enclosed are my own and I am sure that they will evolve over time in light of input from yourself and others and any changes to the draft Bill.

Thanks.

Enclosed: responses to the questions posed by the Climate Change, Environment, and Infrastructure Committee.

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?

Consolidation of the bill is positive and a positive step by the Welsh Government – whilst delayed, now is a better time than later (or words to that effect by the Minister).

Note that no Statement of Policy Intent has yet been published so no comment is possible. To my knowledge, it is not set out when the Statement of Policy Intent will be published by the Welsh Government.

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

2. (1) (e) (i) – an explanation in respect of the “2km long” parameter.

Assumed that the Welsh Government may (re)consult on the thresholds again.

Understood that the UK Government are yet to respond to the Welsh Government on the draft Bill and the request from WG to UKG to devolve those powers in territorial waters. This is assumed to be a concern to WG otherwise the ‘one stop shop’ premise will not apply to offshore projects e.g. offshore wind in the Celtic Sea (which the WG place significant weight upon in their renewable energy generation targets).

It is understood that similar conversations are yet to occur in respect of Crown Provisions (Coal Authority; and HCA) and with regard to the Transport and Works Act Order.

Part 2 - Requirement for infrastructure consent

22. (1) (b) – clarification as to what the Welsh Ministers consider to be of national significance, beyond the thresholds noted in Part 1, would be useful for applicants. Furthermore, an indication of when, and the limitations to this, the Welsh Ministers would make such an assessment would be useful.

25. (4) – important that the ability to scope projects into the IC process which do not meet the thresholds in Part 1 can be utilised by both the Welsh Ministers and the Applicant.

25 (5) – it is important that the Welsh Ministers only consider requests to opt projects in from the applicant, and not any third party.

Part 3 - Applying for infrastructure consent

31. (3) (b) – The use of consent orders are an important next step. However, it is important that both the Welsh Ministers and Local Planning Authority (who will be managing the requirements therein) have access to appropriate legal resource to review in a robust and timely manner, as each application will be accompanied by a draft Infrastructure Consent Order.

Adequacy of consultation is likely to come to the fore – introducing further regulations about consultation on these projects via regulations. It is expected that this will mandate non-statutory pre-application consultation; statutory pre-application consultation; and consultation on any changes made. This possible three stage process will be undertaken by the applicant, prior to the determining body then consulting on the project. Whilst it is noted that this will be a one stop shop so interested parties don't miss an opportunity to be consulted/engage in the project, there needs to be some consideration to consultation fatigue. Whilst a project may exceed the threshold and be designated an IC, that does not necessarily mean that extensive engagement is required- not least if it is development designated within Future Wales or a policy statement (which it is assumed would have been extensively consulted upon itself). Proportionality is key and the application of strict regulations will not allow this.

Part 4 - Examining applications

Cost recovery is an important part of the process, for all parties. It will be important to understand how those seeking to recover costs are also tied to some form of performance bond i.e. timeliness of response; and quality of response. Something akin to the payment of the LIR may be a good starting position – albeit this has greater risk to the applicant than the 3rd party at present (non-performance by a third party means suspension for the applicant).

Part 5 - Deciding applications for infrastructure consent

53. (2) – the weight attributed to any relevant policy statement is noted. It is assumed that applicants, and interested parties, will have the ability to both inform these policy statements and respond to them at the appropriate point. Whilst it is understood that policy statements will be used as reactive tools, there would likely be interest from the applicants in progressing such policy statements to expand upon the policies within Future Wales.

53. (3) (d) – insight into how adverse impacts are weighed against benefits would be welcome. Whilst this is documented in the decision letter, at that point the applicant (and Inspector) have no ability to discuss the balance (impacts and benefits).

Part 6 - Infrastructure consent orders

As noted previously, it is assumed that each application would have to be accompanied by a draft ICO.

Part 7 - Enforcement

N/A.

Part 8 - Supplementary functions

Whilst the ability to introduce Infrastructure Policy Statements is noted, it is unclear how these may be utilised. Are these enhanced versions of ‘Dear Chief Planner’ letters, or something which the Welsh Government will publish and iteratively review, akin to the National Policy Statements in England.

The Bill, in 53(2) grants primacy to any relevant policy statement over that of Future Wales (the National Development Framework for Wales). It is unclear how this provision provides certainty to applicants on projects within Wales. Whilst change is welcome, the consultation and publication of any policy statement is unknown compared to that of Future Wales. An applicant/a project may be a position where the policy change from a policy statement has significant and/or adverse implications.

Part 9 - General provisions

133. (4) – this is the only instance where “hard copy” is noted – which is welcomed. The current process requires both a hard and electronic copy of documents, which adds to cost (both financial and sustainability).

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

Welsh Government resourcing – noting the time it has taken to reach this point (a matter noted by the Minister and members of the Senedd).

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)?

N/A.

Are any unintended consequences likely to arise from the Bill?

Noting the many references to “regulations” and “regulations may make provision for” this Bill is a framework which the Welsh Government intend to build upon – a point they have made clear throughout. However, it is important that those

regulations/secondary legislation is forthcoming and/or that transitional arrangements are in place between the current and future processes.

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?

The principle of cost recovery is noted and agreed subject to those parties recovering their cost align with performance standards in respect of how robust and timely their responses are. Clarity around the use of "substantive response" is important.

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

N/A.
