Solar Energy UK

Infrastructure (Wales) Bill

Consultation

Climate Change, Environment, and Infrastructure Committee

About us

Since 1978, Solar Energy UK has worked to promote the benefits of solar energy and to make its adoption easy and profitable for domestic and commercial users. A not-for-profit association, we are funded entirely by our membership, which includes installers, manufacturers, distributors, large-scale developers, investors, and law firms.

Our mission is to empower the UK solar transformation. We are catalysing our members to pave the way for 70GW of solar energy capacity by 2035. We represent solar heat, solar power and energy storage, with a proven track record of securing breakthroughs for all three.

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Introduction

We welcome the opportunity to respond to the Senedd Committee's consultation on the Infrastructure (Wales) Bill. If Wales is to deliver 100% of its energy needs through renewable technologies by 2035, solar will undoubtedly need to play a core role and will need to be delivered in a timely manner.

Solar Energy UK is a specialist trade association of over 300 leading businesses and 1,200 affiliate rooftop installers, with project experience across the UK and in Wales. Solar is a versatile technology and able to be deployed at both rooftop and ground mount scale. The industry is committed to the delivery of well-designed and well managed solar farms that not only play a significant role in the delivery of clean energy but tackling wider challenges such as climate change and biodiversity loss.

We thank you for taking our response into consideration

Consultation Questions:

1. 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 welcome the intention to unify and streamline the infrastructure consenting regime in Wales. In recent years, delays in infrastructure planning approval in Wales have been growing and we welcome the intention to address the causes of these delays.

Overall, we support the general principles of the Bill in providing greater certainty and consistency for developers, communities and other stakeholders, especially in reference to low carbon infrastructure. The Minister for Climate Change, Julie James, describes the Bill as an "important step" towards delivering on renewable energy targets as Wales moves towards net zero by 2050. A more efficient regime, that is both timely and consistent in its decision making, will improve developer and investor confidence in the regime, and better enable the delivery of Wales' ambitious renewable energy and net zero targets.

We welcome the principle of flexibility written into the provisions of the Bill. Many of the technologies covered by the Bill, solar energy included, have evolved a lot over the past decades and will continue to do so up to the net zero ambition by 2050 and beyond. The needs and views of the public, as well as pressures on planning authorities, are also likely to shift over time.

It may therefore be necessary for the Welsh Minister to adjust the regime to adapt to these changes. It will be important to maintain balance and consistency to allow long term planning and confidence in the development process. Recent inconsistencies in decision making threaten to undermine confidence in the development of solar and other renewable energy projects in Wales. It will be important that policy statements address uncertainty and make deliberate changes where required.

The Nationally Significant Infrastructure Project (NSIP) regime under the Planning Act 2008 does – in general – deliver projects within the prescribed statutory timescales and has been successful. As such, mirroring this process is commendable.

As the process requires a statutory instrument to consent a project (i.e. an infrastructure consent order / IC) it will inevitably mean that the scrutiny of the application will require more resource from all parties involved. This is because the public, stakeholders and applicants will need to fully understand the terms of the powers being sought in the IC. Given the likely increased level of complexity and resource needed to engage in a new process, we have concern that the statutory timescales will not be met, unless consultees are suitably resourced. As an example, the current Developments of National Significance (DNS) regime does have statutory timescales set out, but the majority of DNS projects decided to date have not met these timescales. This has caused significant concern amongst those looking to develop in Wales.

Often statutory consultees struggle to respond and properly engage on DNS projects because of a lack of time and resource. In addition, Welsh Ministers are often the cause of delay e.g. some DNS projects have incurred significant delay in the determination of decisions (over six months from the statutory deadline) and with no reasons being provided for this delay by Welsh Ministers. Such delay and uncertainty is undermining industry confidence in planning and investing in Wales.

The current DNS process gives significant discretion to Inspectors to suspend examinations and to Welsh Government (WG) to delay determinations. We would advocate a more limited set of circumstances where this is permitted to occur in the IC regime. Much of this detail will be provided in secondary legislation and it is important that this comes forward as soon as possible and is scrutinised to ensure that it sets out appropriate procedures which align with the delivery ambitions of the regime.

We assume a first draft of any IC will be based on a Development Consent Order (DCO) which is the statutory instrument required for NSIPs under the Planning Act 2008.

If this is the case, these orders tend to be complex and require significant legal input (and understanding) from all parties. From the experience of our members dedicated to giving legal advice to developers through the DCO process, often third parties find it difficult to comprehend these complex documents without advice. As noted, this requires significant time and resource to enable participants to understand how the consent will operate and how the powers sought will be used. The DCO process does of course aim to set out how any consent will operate in practice but, again, it takes time to engage with this.

Our concern is that the resource available in the Local Planning Authorities (LPAs), Natural Resources Wales (NRW) and Cadw etc. will struggle to deal with i) the number of projects expected to come forward and ii) the increased level of scrutiny needed to understand the provisions of the statutory order (which, in practice, whilst generally following a similar format, are different for every project). On this basis, we would call for there to be more support, resource and funding provided to statutory consultees by WG to ensure that they can meet the ambitions of the new regime.

Finally, there are loose ends which will need to be tied in with the proposed Planning (Wales) Bill (not yet published) i.e. the Bill announced by WG to codify the planning system as it applies to Wales. Without an understanding of how this Bill will alter the approach to the codification of the planning system in Wales, it is difficult to understand how aspects of the Infrastructure (Wales) Bill will interact with other regimes or whether they will be incorporated into the new codified system.

While the principles of the Bill are very legitimate and needed in a regime which has become very complex, a lot of detail is dependent on forthcoming secondary legislation, and we welcome further clarity on how these principles will work in practice.

2. 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?

2.i) Part 1 - Significant infrastructure projects

For solar development, the 50MW threshold should be its inverter rating (AC) and not its DC rating (which for a 50MW AC project would be closer to 70MW).

This position has been accepted by the Secretary of State in England. It would be helpful for this to be set out in the Bill to avoid confusion on this threshold in Wales.

In principle, we welcome the flexibility for onshore electricity generating projects between 10MW and 50MW to voluntarily be considered under the new legislation as a Significant Infrastructure Project (SIP), or through the LPA.

We would welcome further clarity as to how this would work in practice, particularly in relation to solar projects. Clarity would be welcomed on whether there is absolute certainty that a project put forward by developers as a SIP will be accepted by the Welsh Minister, or could they reject such an application (even when a project is within the optional thresholds). Or inversely would a solar project within the threshold not volunteering as a SIP be called in and subsequently designated as a SIP by the Welsh minister. Further guidance on this aspect, and others including the criteria to be met for a positive Direction to be made and the timescales for that decision, is required to provide certainty to developers and other stakeholders.

2.ii) Part 2 - Requirement for infrastructure consent

We welcome the intention to unify all consents and authorisations under a single consenting regime to reduce confusion and complexity. This will reduce the burden on developers to approach multiple authorities as well as the time delay this can cause. It should also make the process easier to understand, benefiting communities, developers, and other stakeholders, facilitating a more informed and transparent discussion around applications.

We are aligned on the views of Renewable UK Cymru (RUK Cymru) on the provisions under Section 22 which enable the Welsh Ministers to give direction specifying a development project that does not qualify as a SIP to be treated as such and on the reverse, Section 24 allows projects to not be treated as SIPs.

These reflect Section 35 of the Planning Act 2008 but differ in that projects can be directed as SIPs if an application has already been made. We are concerned that no timeframes are given for such a decision to be made and suggest that this is set in alignment with Planning Act 2008 at 28 days. Furthermore, no definitive indication of what would be viewed as nationally significant is given. We would welcome the opportunity to engage with the consulting process to determine the regulation.

2.iii) Part 3 - Applying for infrastructure consent

We note that statutory pre-application requirements in other consenting regimes are largely defined upfront in primary legislation, e.g., Part 5, Chapter 2 of the Planning Act 2008. An upfront approach whereby requirements are given a level of definition in the proposed Bill itself would be welcomed.

We understand that all detail regarding how pre-application consultations should be carried out, responded to and reported will be set out in forthcoming regulations. This is unhelpful and we ask that WG provide further detail regarding these proposals to aid understanding of the Bill's intent. It is imperative that consultation takes place which is both effective and meaningful.

We recommend that the current requirement under the DNS regime, to consult on a full draft application, is reviewed. Once a full draft application is in place, it allows limited scope for amendment in response to consultation feedback (often because of the need for technical assessments to have been finalised by the time of consultation). This approach has been criticised by users of the DNS process. Statutory consultation would be more useful if undertaken earlier in the development process, so that a proposal can better respond to the feedback of consultees.

Some developers run a non-statutory consultation ahead of statutory consultation to ensure greater community engagement. We suggest that the information to be provided as part of a statutory consultation should be the key aspects of a draft proposal but not a full final draft; a working draft would be more appropriate where it is acknowledged that the materials are being developed and may change. This gives all parties more flexibility, control, and opportunity to account for matters. This should also mean that delays (as we've seen in the DNS process post-submission) are avoided during the examination process.

Lastly are aligned with RUK Cymru on the following provisions:

- ·Section 32 (1) which notes that Welsh Ministers have power to determine whether or not to accept applications and must give notice of their decision. For this decision as with provision under Sections 22 and 24 no timescale is given and we would welcome a similar 28-day time limit as is set out in the NSIP process.

- ·Section 33 (7) allows Welsh Ministers to extend the deadline for receiving representations in response to an application for Infrastructure Consent and allows this to occur more than once. We accept that extending the deadline for receiving representations can be necessary however we would support this having to supported by a strong justification. There is a risk that under-resourcing at LPAs, for statutory consultees and at PEDW deadlines are regularly extended undermining the objectives of the Bill to give certainty to the planning process.

2.iv) Part 4 - Examining applications

We welcome the intention to develop a regime which will provide timely, proportionate, and consistent decision making. Further information is needed as to how applications will be examined, in particular, regulations for how an examining body can apply the use of hearings, inquiries or written representation, dependent on secondary legislation.

The Bill sets out a very concrete 52-week timeframe from the validation of the application to decision, however, the time frames within this 52-week period for examination are not very clearly defined. Moreover, no indication of how suspensions or postponements might arise is set out in the Bill. We are conscious that a number of DNS projects have experienced significant delay in being determined by WG and the industry would welcome this practice being curtailed (particularly where no reasons for the delay are given).

Section 50 notes that Welsh Ministers have the power to direct the Examining Authority to re-open the examination in accordance with the requirements of the direction. This is of concern as there is no timescale specified and no indication as to how this would fit within the overall 52-week period in Section 56(1). Again, this undermines the certainty objective in the Explanatory Memorandum.

A lack of resources across the planning process is one of the sources of delay and uncertainty in the existing DNS process even though it provides its own statutory timescales.

Greater resources need to be provided to all public sector parties involved in the planning process to ensure they are able to realistically deliver on the provision set our in the Bill.

We look forward to the opportunity to provide feedback on forthcoming secondary legalisation, which should give more detail to the process.

2.v) Part 5 - Deciding applications for infrastructure consent

As in our answer to Question 2.iv) Part 4, the definite 52-week time limit is useful in providing certainty however much of what needs to happen in that period from validation to decision is not clearly defined.

It is not clear how the infrastructure policy statements (IPS) will interact with the National Development Framework (NDF) in terms of priority. Currently, the NDFs relevant to DNS projects and the Planning and Compulsory Purchase Act (PCPA) sets out its primacy in the decision-making process.

We assume the NDF will become a relevant consideration in the determination of SIPs only but as there are no IPSs in place yet, it would be helpful for WG to explain how they expect it will work in practice.

We also have concern with the provisions which allow this period to be extended (for a seemingly indefinite period). For example, in Section 56(1)(b), there is the ability for the applicant and the Welsh Minister to agree an extension to the 52-week period. We assume this – in practice – relates to the Welsh Minister's determination period only and not, for example the examination period or the Examining Authority's timescales to make a recommendation.

However, the provision also allows WG to extend the determination timescale unilaterally. From current experience of the DNS process, we consider that the use of this power should be restricted (tied to specific events) and it should be imperative for the Welsh Minister to give reasons for any extension to the determination timescales (something which has not been happening on DNS projects). This is not helped by the fact that there is no recourse for an applicant to challenge or appeal the Welsh Minister's delay in determination and it is concerning to see Section 93(8) which prevents any challenge by judicial review to ongoing delay.

2.vi) Part 6 - Infrastructure consent orders

All details for the procedure for changing and revoking IC in Section 88 will be set out in the regulation. The change to the procedure under the Planning Act 2008 is important but has not been effective given the lack of statutory timeframes. We would encourage any change to a consented IC to involve a proportionate process. If a change to an IC equates to the equivalent of a full IC application, it will doubtless be an impingement to the delivery of new infrastructure. Even a material change to a consented IC should be able to be achieved quickly (depending on its extent) and within a short timescale that does not delay the delivery of the project.

Lastly we are aligned with RUK Cymru on the following provisions:

- ·In Sections 65 to 68, a number of references are made to 'special Senedd procedure.' No detail is given with regard to this procedure nor are any timescales given. If this procedure is not including with the IC statutory timescale of 52-weeks, it threatens delays and undermines certainty in the process.

- ·We welcome the provisions in Section 84, granting powers to correct errors in decision documents. This will make the post-determination process more efficient.

2.vii) Part 7 – Enforcement

No comment

2.viii) Part 8 - Supplementary functions

No comment

2.ix) Part 9 - General provisions

No comment

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

Where authority has shifted between the DNS and SIP regime resourcing is important to ensure the Welsh Minster or selected examining body doesn't become a bottleneck for planning decisions. Statutory consultees and LPAs should have the resources to engage in consultations and report on projects in a timely and consistent manner that maintains confidence in decision making. Poor resourcing has the potential to undermine any efficiency gained through improved procedures as applications get stuck and delayed or poor and inconsistent decisions are made, and then challenged. Furthermore the transitional arrangements need to be defined to ensure defined to avoid additional cost and effort being spent.

Uncertainty, as with all policy and especially policy change, represents a barrier to effective implementation. For this reason, as in our answer to Question 1, maintaining balance and consistency is as important as making changes to adapt to an evolving planning environment. And equally, the sooner the bulk of regulations dependent on secondary legislation in relation to the Bill are made public and confirmed the greater confidence developers can have in preparing for the change in regime.

4. 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)?

Almost all detail is deferred to secondary legislation. As such, it is difficult at this stage to understand how much of the process will work in practice. We assume that the secondary legislation will be consulted on in due course.

5. Are any unintended consequences likely to arise from the Bill?

No comment

6. 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

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

The memorandum does not give any indication of a transitionary period. There are prospective projects in the early design stages now that may have to take into account potential changes to the planning regime in 2024/2025.

The memorandum gives a high-level perspective on the planned provision and general principle of the new regime, however, much of the regulation is dependent on secondary legislation which makes it difficult to give a full assessment of the viability and impact of this regime in response to this consultation.

There is little detail on the 10W to 50MW 'optional' SIP category and how this will work in practice. The supporting material suggests that WG will determine that solar and wind projects between these thresholds will need an IC and that it is a WG decision. Given the potential involvement in an IC proposal it seems like these projects would benefit from a streamlined IC process rather than having to go through the full process.

8. Anything else?

No comment