

Energy UK response: Implementing the Infrastructure (Wales) Act 2024

Energy UK is the trade association for the energy industry with over 100 members - from established FTSE 100 companies through to new, growing suppliers, generators and service providers across energy, transport, heat and technology. Our members deliver nearly 80% of the UK's power generation and over 95% of the energy supply for 28 million UK homes as well as businesses.

The sector invests £13bn annually and delivers nearly £30bn in gross value - on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors. The energy industry is key to delivering growth and plans to invest £100bn over the course of this decade in new energy sources. The energy sector supports 700,000 jobs in every corner of the country.

Energy UK plays a key role in ensuring we attract and retain a diverse workforce. In addition to our Young Energy Professionals Forum, which has over 2,000 members representing over 350 organisations, we are a founding member of TIDE, an industry-wide taskforce to tackle Inclusion and Diversity across energy.

Executive Summary

The Act is a welcome reform to some of the current inefficiencies of the Welsh planning system. However, Energy UK is concerned that a number of the proposals are still subject to supplemental legislation, and therefore not yet finalised, as well as aspects of the proposals creating additional hurdles to developers by being overly prescriptive in places. This is particularly true to areas such as Statutory Consultees, as well as duty to consult what could be a potentially very broad number of stakeholders. We look forward to seeing how supplemental legislation will expand and define these further, and seeing the Act progress into implementation.

If you would like to discuss this response in further detail with Energy UK and its members, we would welcome further engagement.

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Chapter 2: Transitional Provisions

Do you agree with the proposed transition points in existing consenting regimes? If not, why not?

We agree in principle. However, there are some areas (such as definition of ‘relevant newspapers’) we would like further clarity on, which we return to in our answers to Chapter 7.

What time period is considered appropriate between regulations being laid to the infrastructure consenting process coming into force?

Transitional arrangements are rightly raised as an important area of concern for developers. We would recommend an approximate time of 5 months, based on implementation timeframes from the Planning Act 2008. This should allow sufficient time for existing developments for 2025 time to adapt to the new regulations, whilst not disrupting existing projects.

What time between the legislation being made and coming into force is sufficient for all stakeholders to understand the requirements?

As above, a rough timeframe of 5 months.

What other provisions should be introduced to enable projects to move to the new system?

Provision of information between planning authorities and developers is critical during this phase. The Welsh Government should ensure that planning authorities are as sufficiently resourced as possible to provide the information on the Act’s requirements to potential developers, and that the default is reminding developers of the new rules and provisions at all relevant trigger points (trigger points in this instance meaning at any point where planning authorities and developers of an existing project are required by the system to interact and exchange information).

The discretionary powers provided to Welsh Ministers can change the transition period, but would like further assurance these powers will only be used in exceptional cases. We’re also concerned over the potential that Ministers could dismiss pre-application works between DNS and IC regimes, and the risk that pre-application work could be lost between regimes. Subordinate legislation should set up clear and objective criteria in which PAC works can be directed as invalid.

Chapter 3: Developments that fall within the consenting process by Direction

Do you agree with the projects that may be directed, and their corresponding thresholds?

Yes. The Act itself sets out criteria for 50MW-350MW, so the additional guidance here is helpful for further generation projects. Outlining this and the relation between the proposals in the consultation and the proposals in the Act would be useful for respondents, as this was not outlined in the consultation document. Across the border in England, the recent proposed changes to the NSIP scheme may have ramifications and knock on impacts for Wales, and implementation of the Infrastructure Act and changes to the NSIP regime should be closely coordinated between Welsh and UK governments to avoid adverse impacts on Wales.

We also note that requests for direction should be made public as best practise. This is as a transparency measure, and covers risks for developers in the event of future challenge. Information provided for significant projects could include further information for grid connection availability, network information, and other cross sector relevant information (such as water availability).

On energy storage, this currently is treated as a SIP project if it is in the 50-350MW range. We believe this may cause a clustering effect just below the 50MW threshold so developers avoid the additional costs of the SIP process. We would support increasing the threshold for storage to 100MW in order to avoid this.

We also note that the onshore generation threshold does not yet specify whether solar PV will be treated as AC or DC. Our understanding is that, in line with EN-3 in England, solar will be treated as MWac. In response to this consultation and in supplementary guidance, Welsh Government should clearly articulate that solar will be measured as MWac.

The consultation sets out that Ministers may direct a project as a SIP in cases where a project does not meet the relevant criteria. At this stage in the planning process, developers may not be willing to publicise information that may be commercially sensitive. As drafted it is unclear whether a direction request under the IC regime would be confidential and not made a public record. We would like clarity as to whether the rules confidentiality rules on making a direction request, and provide ability for applicant to consult with Ministers for a direction without details being immediately disclosed publicly.

What other new or novel technologies not currently listed in the Act should be listed, and what is the corresponding threshold?

While hydrogen production is outlined in the consultation (but not specified in the Act), it makes no references to hydrogen transportation and storage infrastructure. This could either added for consideration or adapting from the relevant gas infrastructure parts of the Act. Clarity is needed on whether hydrogen would be treated as an associated development when it involves multiple energy generation sources. Equally, no explicit mention of Carbon Capture Utilisation and Storage (CCUS) infrastructure is mentioned, and should be included as part of the existing forms of infrastructure such as 2B, or added where required (such as Direct Air Carbon Capture and Storage or DACCS, which would not fall into any existing area currently). Underground electric lines for the connection of generation infrastructure are not mentioned, and should be added along the same criteria as that for overhead lines. Thresholds should not result in types of proposals for works that are already consented under existing and proportionate regimes e.g. s 37 being undermined by new IC consents.

Chapter 5: Extinguished and Deemed consents

Do you agree with the Consents that may be extinguished/deemed? If not, what consents should be removed or listed?

These appear to be in order, however deemed marine licenses under the Marine and Coastal Access Act 2009 should be included, as well as relevant transitional arrangements highlighted in Chapter 2 of the consultation document.

Which consents should be extinguished/deemed only with the consent of the relevant body?

Please note the above response.

Chapter 6: Pre-application: Advice and Information

Do you agree with the general approach proposed for pre-application services? If not, why not?

Yes. Pre-application requirements and services can speed up an application, and help engagement and transparency throughout the whole process. The main stumbling block to avoid with pre-application requirements is making them too onerous, and we feel this is avoided in the proposed requirements. The consultation sets out that decision-makers are not required to meet with applicants where they consider it unnecessary, without the need to specify why. Our view is that in these instances, the decision-maker must provide sufficient justification as to why it will not meet with the

applicant, as specified in supplementary guidance. Equally, another important requirement for an online portal for pre-application services and requests in a single, easily accessible digital space.

Do you agree with the proposed minimum requirements specified for the Welsh Ministers, LPAs and NRW in providing pre-application services? If not, should any requirements be added / removed?

We agree with the requirements specified for Welsh Ministers. For the LPAs and NRW, we agree in principle, however there are areas where greater specificity is needed. For example, which environmental considerations need to be taken into account by Natural Resources Wales could be an incredibly broad category, which leaves the door open to a wide range of interpretation. Further definition would be useful for developers and appreciated, especially as it will allow them greater clarity on material they need to prepare for. We would also add that 28 days for responses is unlikely to be realistic, and misaligns with the deadlines for PAC services.

We support publishing pre-application information services and relevant materials on websites, as we feel this will increase transparency and result in a clearer application all around. Our main concerns over this pre-application process are around a wider point in the planning system of resourcing. We appreciate the notes on timings for processes in this and the wider consultation, as we believe this will focus resourcing across the pre-application system more appropriately. However, we would maintain that a clear focus from the Welsh government on how it will adequately resource the pre-application process will be a major factor in determining its success.

Do you have any comments on the process for obtaining information about interests in land?

Section 28 does incentivise good engagement for developers and landowners, which we see as a positive, as well as a fee providing an additional incentive. As for our views on fees more generally, please refer to our response to Chapter 10. However, given aspects of this are still to be determined in future regulations, there is a limit to how much we can engage on some of the aspects presented here. Time periods for determination at 3 months is a longer time than we would prefer. Given this in one part of the pre-application process, which is one part of the planning system, we would like more information as to why determination takes this long and what can be done to bring this down closer to 6 weeks. If this is subject to resourcing concerns, we would echo our points above. As for the timescale for responding, we would also appreciate further information on why this timescale takes as long as it does. If this is simply notification of decision, this should take less time than 21 days, ideally 10 or less (consistent with other similar process timescales presenting in the consultation).

Do you have any comments on the process for powers of entry to survey land?

As above, we largely support, or we feel further clarification is required. In particular, we are concerned about the wording '*Either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land*' being significantly too open to interpretation. Other areas such as '*Identifying persons of interest*' should also be rephrased – '*progress in identifying persons of interest*' may be a more appropriate wording. As for our views on fees, please refer to our response to Chapter 10.

Chapter 7: Pre-application: Notification and Consultation

Do you agree the proposed minimum requirements are proportionate given the different types of application that may be submitted? If not, why not?

We agree with the minimum requirements set out in section 7.6 and 7.7, especially as 7.7 overlaps information with section 6.8 in the chapter above. The information required is not too onerous or light touch, and is likely to mandate a better quality development process overall. We fully support 10 days for notification. We are supportive of the idea of early and transparent engaging leading to more success through the planning process. That being said, some of these are contingent on future

legislation being presented to the Senedd, which we have not yet seen, so our comments here cannot be treated as final endorsements for these proposals, as these proposals have not been finalised.

There are also other requirements set out in Chapter 7 around which we have much greater concern on being too prescriptive. First of all, we oppose requiring a dedicated website, and would lighten this to a dedicated webpage on either a developer's existing site or through relevant materials on a local authority or Welsh government website. There must also be a requirement for the website to be publicly accessible. So long as the relevant information is publicly accessible on the internet, we consider this is sufficient, and support this requirement within 3 months or ideally less. While we support newspaper engagement too, we don't think this should be a mandatory requirement, as some rural areas may not have high circulation of local publications or be applicable to the relevant development. The developer's evidence for public engagement in the pre-application consultation report should be sufficient to show whether they have sufficiently engaged or not with local communities, with the incentive of being more likely to enter the application stage smoothly encouraging developers to engage with communities. We believe these requirements are overly prescriptive and make rural developments disproportionately more difficult. Equally, for community events, these should be encouraged but not formalised. Different communities will have different needs and requirements, and lack of engagement with communities by developers will still show on pre-application consultation report and reflect poorly on the developer.

On the requirements to notify development on both land and sea, we support the idea, but we cannot support the requirements in their current form as they are far too opaque. For example, it is not clear that *'Notify in writing all persons who own, occupy or have another interest in the land to which a proposed development relates, or could be affected in such a way that they may be able to make a claim for compensation'* wouldn't put a requirement on developers to notify anyone with an interest in the land at all, even those outside of the area, and could lead to developers spending excessive amounts of time trying to pre-empt any and all potential objections from any parties. This both would cause onerous development barriers, and would also divert resources from engaging constructively with the more direct stakeholders such as landowners and local communities. The requirements to notify developments must be changed to be more targeted and specific, otherwise this is a major potential loophole that could affect broader development.

We are minded to oppose subordinate legislation for yet further requirements for undertaking a period of additional statutory consultation in the final land interest consultation. This is likely to reach breaching the 12-month proposed limit for pre-application, and overly excessive for what is still a pre-application stage. We would need to read the accompanying legislation to make final determination on this, however.

We approve of a maximum 12 months for pre-application, although only on the condition that some of the above areas are met, and without this, developers may need large amounts of extra time to protect their pre-application. Pre-application should be straightforward enough that 12 months is practically never reached in most pre-applications, with a majority of pre-applications made in under 6 months. If this is not the case in future after these requirements are implemented, the pre-application system will require re-visiting. While we would like to aim for 12 months, this should remain flexible, as it is likely some cases will take up to 18-24 months. We approve of the guidance on site notices.

Finally, on pre-application reports, we support these. Further information on when these are required in relation to the 12-month window would be useful for added context.

Do you agree with the proposed content of a substantive response? If not, why not?

A substantive response may include 'no comment', which under this system, therefore somewhat undermining its goals. Rather, this should clarify a statutory body does not objections to the proposed approach. We agree in principle with the idea that once the PAC passes, statutory bodies cannot raise new substantive objectives. However, in practise this may increase the risk of Judicial Review later. The inspector may need to retain powers to view sufficient objections as important and therefore to be dealt with.

Do you agree with the introduction of a 'pre-application validation' process and a two-step pre-application consultation process? If not, why not?

We do not agree with the 'pre-application validation' process, as we feel this is replicating too much of the rest of the pre-application requirements and is unnecessarily onerous on top of other pre-application requirements. If it is to be introduced, we strongly support it being non-mandatory as set out in the consultation response. We support a non-mandatory two-step approach.

Chapter 8: Applications for Infrastructure Consent**Should any additional information, documentation or plans be submitted with an application for infrastructure consent?**

Yes. While as it stands, this is quite a breadth of new material required to be submitted under these new proposals, we do not propose adding further requirements for general applications. For generation stations specifically, a requirement to notify relevant energy authorities such as the NESO could be a useful requirement for linking up new energy infrastructure with future spatial planning requirements. For our points on NESO and statutory consultees, please refer to our response to Chapter 9.

Do you agree with the general approach for submitting and validating applications for infrastructure consent? If not, why not?

We agree with the general approach, but as with the pre-application requirement, we have concerns over loopholes in the wording. For example, '*A description and reference of any additional plans, drawings and / or documents submitted with an application*' could essentially mean the developer is required to submit any material. Whilst a need for wider material is of greater importance at the application stage rather than the pre-application stage, this still means a developer essentially could face rejection for not submitting a wide variety of potential given documents. Equally, another example of '*Any other plans, drawings and information necessary to describe the proposed development*' is similarly extremely broad, and grounds for rejection of a development could be based on a very wide variety of potential reasons, given that this is mandatory information to provide. As with our points in the pre-application chapters, '*Any other persons who own, occupy or have another interest in the land to which a proposed development relates, or could be affected in such a way that they may be able to make a claim for compensation*' potentially puts the emphasis on the developer to have consulted with any person or persons with a conceivable connection to the land. While we appreciate there will be an air of subjectivity on ultimate decisions, this could lead to developers collecting greatly more information than they need in an attempt to satisfy any possible avenue that these clauses may mean. As with previous answers, our positions on this cannot be finalised either, given that the subordinate legislation is not yet in front of us to assess, and may differ from that presented in this consultation document.

Do you agree with the proposed minimum requirements for publicity and notification of an application for infrastructure consent? If not, why not?

As with for the pre-application information in above chapters, we disagree with the newspaper requirement, considering it arbitrary. Publicity should be more flexible to the development area in question. We agree on no requirement on community consultees, feeling a response is much more useful if community consultees act on their own initiative about a development.

Do you agree with the proposed content of local impact reports? If not, why not?

We agree. We note that local impact reports are broader and can take into account a wider variety of factors than required application information. However, so long as LPAs are functioning correctly, this is a positive direction, as it will allow local impact reports to be unconstrained in assessing any manner of disruption that the development may impact. We are largely satisfied with the proposed content.

In relation to the local impact's report's interaction with local development plans, the new SIP regime needs to be underpinned by new Infrastructure Policy Statements. Without these policy statements, Future Wales policies will be weighed against other Development Plan policies which have localised objectives. Whilst existing national planning policies will be relied upon, there needs to be certainty that ministerial decisions on ICs will be based primarily on these policies. There therefore needs to be a section included which identifies that Future Wales will be the policy basis for such decisions.

Do you agree with the proposed content of marine impact reports? If not, why not?

As with terrestrial local impact reports, we are satisfied with the proposed content.

Do you agree statutory consultees should not be able to provide comments on any matters which could have been raised during the pre-application consultation period? If not, why not?

We are wary about potential changes that could be made at this stage, but are currently satisfied that the consultation has identified and constrained the risk of runaway changes at this stage of the planning process.

Chapter 9: Statutory Consultees

Do you agree with the proposed statutory consultees to be consulted in all cases? If not, why not?

No, we don't think it's necessary for all of the statutory consultees in all cases. For example, why is it necessary for Severn Trent Water to be covered in all cases, when they do not supply water for most of Wales, including none of the South and much of the North West? Would the Canal and River Trust be required consultants when a marine energy project was being applied for? If examples such as the above are true, this is a deeply flawed proposal, and we would like further clarity on what is being proposed. A large number of proposed statutory consultees is likely to lead to bottlenecks and delay throughout the planning system, as even if developers, LPAs and the Welsh government all have adequate resourcing in the planning system for applications, any one of these statutory consultees not having the resources to respond in a timely manner can slow down the passage of the application. Given this, statutory consultees to be consulted in all cases should have a geographical interest in the application and the type of application involved. Therefore, other than Natural Resources Wales (who will already be consulted in the proposed pre-application process in early chapters) we do not believe any of the remaining statutory consultees should be required to be consulted in all cases, although we believe it's highly likely many will be consulted in a majority of cases (such as Public Health Wales and Transport for Wales).

Do you agree with the proposed statutory consultees to be consulted in specific circumstances? If not, why not and have any been missed?

There is also a distinct lack of energy related potential stakeholders in some of the more specific proposed statutory consultees throughout this chapter. While we have been unable to ascertain the laws on which bodies can have a duty imposed upon them by the Welsh government in time for this response, it would be useful to have further information on the potential relationship between the National Energy System Operator (NESO), the proposed Regional Energy Strategic Plan (RESP) board for Wales, the Distribution Network Operators (DNOs) for electricity (which are National Grid and SP Energy Networks), and the gas distribution operator of Wales and West Utilities, among other potential new stakeholders as the energy system evolves for UK wide power system decarbonisation.

Chapter 10: Fees

Do you agree that the relevant LPA should receive a fixed fee for producing a Local Impact Report? If not, why not?

Yes. There isn't a strong case for variation of a standard fee for LPAs, in no small part because LPAs can charge for other costs more specific to the local area. These should be limited, given the number of fees charged over this process.

Do you agree that the LPA should receive a reduced payment, or no payment, if they do not submit the Local Impact Report within the timescale and minimum requirements? If not, why not?

Yes. The LPA should receive a reduced payment of 25% for a report over the deadline by a week or less, with an additional 25% subtracted for every week late until no payment is required. This will incentivise efficient delivery and reduce blockages in the planning system, but a reduced series of payments will still incentivise some Local Impact Report within a limited window, encouraging LPAs not to abandon other efforts up to that point.

Do you agree that NRW should receive a fixed fee for producing a Marine Impact Report? If not, why not?

Yes. Our answer for Marine Impact Reports is the same as for Local Impact Reports.

Do you agree that NRW should receive a reduced payment, or no payment, if they do not submit the Marine Impact Report within the timescale and minimum requirements? If not, why not?

Yes. Our answer for Marine Impact Reports is the same as for Local Impact Reports.

Do you agree that the applicant should not receive a full refund if their application is invalid? If not, why not?

We take the point that costs are incurred processing an invalid application, and this should be paid by the applicant. However, retaining the fee should only extend to covering these costs and no further, in no small part due to the wide criteria used in the application stage that could lead to an application being declared invalid (which we have covered in our answer to Chapter 8).

Do you agree that fees should be paid in stages or one initial application fee paid and if the processing of an application is less, this will be refunded?

We support not including a separate determination fee. Other than that, we have no direct views at this stage.

Related to the question however is that we have a particular issue with Statutory Consultee Fees. Given our objections to the proposed Statutory Consultees in Chapter 9, we not only think there are too many Statutory Consultees for applications, if all of these organisations set their own fees and there are mandatory organisations, this could lead to potentially high costs for little benefit in some cases. We would caution that not only do some of the mandatory Statutory Consultees need to be dropped, but appropriate guardrails need to be in place to make sure Statutory Consultee fees are appropriate to resourcing those organisations.

Overall, we expect any increases in fees to be matched by improvements in resourcing within LPAs and NRW and more efficient management of caseloads.

Chapter 11: Examination

Is the examining authority best placed to determine the procedure for an examination?

Yes. The examining authority should have more criteria potentially placed upon them, if not in the Act, in advisory guidance somewhere. The procedure for choosing an examining authority is simply that

the 'The Welsh Ministers must appoint a person or a panel of persons to examine each valid application for infrastructure consent'. Given the extensive and well-designed criteria for the procedures for the examination itself presented in the consultation, there is little guidance on how the examining authority is selected, which makes the above question harder to determine. In principle however, we have no objections to this.

Is ten or more requests an appropriate amount to trigger a requirement to hold at least one open-floor hearing during examination? If not what number of requests is?

Ten requests is appropriate.

Chapter 12: Deciding Applications and Making Orders

In addition to those specified in Section 60(2) and 62(3) of the Act, who should the Welsh Ministers notify of a decision for infrastructure consent and the reasons for the decision??

Those specified in the Act (the applicant, the planning authority or community council, Natural Resources Wales, or any other persons) are still appropriate.

Chapter 13: Environmental Impact Assessment (EIA)

Do you have any suggestions on how to align existing EIA processes with the Infrastructure Act?

Given the EIA process is largely regulated upon and governed elsewhere, we consider the impact of the Act likely minimal on EIAs. Efforts need to be made to make sure alignment is effective between the Act and Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 and the Marine Works (Environmental Impact Assessment) Regulations 2007, but we do not foresee any major problems at this time.

On the consultation points around EIAs, Energy UK's position is that EIAs require reform of the existing system to be more efficient and effective, rather than a wholesale overhaul, and we are generally not supportive of Environmental Outcome Reports for this reason. Given the existing expertise and knowledge in EIAs, a broader change of the system is likely to result in significant delays in the environmental consenting process. Rather, we would prefer a greatly more efficient version of the existing system, which focuses on mitigation solutions across multiple applications, with EIAs being less individualised and having a greater exchange of information on similar developments and applications.

Chapter 14: Post-decision

Do you agree with the approach set out for amending an infrastructure consent order? If not, why not?

Generally yes. We recognise the approach laid in the Act gives the power for a political decision on amending ICs, and we feel it is well advised to remind Ministers that frequent and large amendments of ICs risks investment in Wales and economic potential. These are political decisions, but must be made in light of these broader consequences.

Do you agree with the approach set out for revoking an infrastructure consent order? If not, why not?

As above.

Chapter 15: Compulsory Acquisition

Do you agree with the procedure specified for determining a compulsory acquisition request as part of an application for infrastructure consent or when amending an existing order. If not, how should the procedure be amended?

For pre-application decisions, please refer to our answers for that section of the consultation. For the rest of the proposals here, they seem reasonable, although further streamlining of the process would be useful where necessary.

Do you consider specific procedure should be set out in subordinate legislation regarding examining a compulsory acquisition request as part of an application for infrastructure consent? If yes, what procedure should be specified?

The procedure overall appears reasonable, please also take on board our other points rather for the pre-application and application stages in the rest of this response as a reference guide to some other details, including the publicity and timings points raised. As with other points in this consultation, we would have to examine this subordinate legislation in further detail to fully assess the proposals.