

Infrastructure 43, Associated British Ports

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 Porthladdoedd Cysylltiedig Prydain | Evidence from Associated British Ports

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?

Associated British Ports (ABP) is the UK's largest port operator with 21 ports. ABP's five ports in South Wales, Barry, Cardiff, Port Talbot, Newport and Swansea play a vital role in serving the Welsh economy, contributing £1.5 billion in GVA every year and supporting 21,800 local jobs. Over £2.3bn of trade passes through our Welsh ports per year.

ABP welcome the opportunity to submit written evidence to the Climate Change, Environment, and Infrastructure Committee regarding the Welsh Government's Infrastructure (Wales) Bill and look forward to providing oral evidence to the Committee later in the year.

In summary, and as set out in further detail in these representatives:

- ABP support Welsh Government's aims to establish a unified consenting process for infrastructure projects in Wales and in Welsh waters;
 - The integrated consenting approach will bring multiple benefits to all stakeholders involved, including the developer, statutory consultees and the general public, and which ABP support;
 - ABP welcome the flexibility put forward within the Bill to be able to respond to new and emerging development technologies (e.g. under sections 22 and 24) and with this in mind, have provided suggestions for the Bill within our response;
 - ABP would welcome clarity on the scope and timescales of the transitional arrangements, secondary legislation and any additional national policy statements.
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Overall, ABP support the aims of the Infrastructure (Wales) Bill to establish a unified consenting process for infrastructure projects in Wales and in Welsh waters.

ABP consider there to be multiple benefits in setting an integrated and singular consenting approach, which will provide clarity to developers on timescales and requirements for applications, as well as consistency for stakeholders engaged in the process. The new form of Infrastructure Consent will enable developers to progress a complete project through comprehensive consultation, consenting and delivery stages. Not only will this bring multiple benefits to the developer to ensure the successful delivery of the project, but will enable stakeholders to engage and influence the complete project through clear stages under one regime.

In particular, we welcome that the Bill enables Associated Development to be consented for projects where infrastructure consent is required. This enables development which is associated to the principal infrastructure project to be assessed and delivered under one consenting regime, in line with the ethos of a unified consenting process.

We also welcome the introduction of section 22 to enable Welsh Ministers to direct on a case-by-case basis whether a project that does not qualify as a Significant Infrastructure Project should be treated as such. This provides the ability for projects that are of national significance but do not explicitly fall within the thresholds, to realise the benefits of the singular consenting process, as put forward by the Bill. Likewise, we welcome the introduction of section 24 that specifies development to not be treated as Significant Infrastructure Projects, thereby providing flexibility both ways.

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

We support the range and type of developments that are proposed to be designated as Significant Infrastructure Projects.

ABP welcome the provisions in section 24 enabling Welsh Ministers to give a direction to specify a development would not be a Significant Infrastructure Project as this provides potential flexibility. However, it is our view that this power

should not be able to be used without formal consultation which we would suggest should be a statutory requirement.

Part 2 - Requirement for infrastructure consent

The requirement for infrastructure consent is appropriate.

Part 3 - Applying for infrastructure consent

We would suggest significant resource savings could be made if the requirement in section 33 for Welsh Ministers to advertise and give notice of the acceptance of an application for infrastructure consent were amended, so that the requirement was placed on developers. This would also reduce the scope for delay and administrative errors being made.

There does not appear to be any time limit for the Welsh Ministers to decide whether to accept an application in section 32. For the regime to work effectively, Welsh Ministers should commit to a time frame for decision making and we would suggest 28 days would be proportionate and appropriate.

Prior to an application being made, there is a requirement for consultation to be carried out in section 30, in respect of which regulations are to be made. While we recognise the important role of consultation, there is an opportunity to ensure that the Welsh system improves on systems elsewhere in the UK, that it is as efficient and effective as possible and that the regulations are not excessively onerous. This is in no way to suggest a diminution or dilution of standards. It is to make Wales as attractive as it can be for the development of infrastructure, such as renewable energy, in the context of global competition for investment.

The requirement for Natural Resources Wales (NRW) to produce a marine impact report where the application includes a deemed marine licence in section 36, appears out of step with equivalent regimes elsewhere in the UK. If it is to be included it is essential that this requirement is undertaken such as to ensure no additional time constraints to the process are incurred. Clearly NRW are an important consultee and we would suggest they are included in the consultation regulations without a legislative requirement for them to respond.

Part 4 - Examining applications

The proposals as to how examination may take place from section 41 appear to be similar to planning application being determined on call in or appeal. Our view is that the conduct of the examination should remain flexible. It would be helpful to clarify when sections 44, 45 and 46, include a focus on the public inquiry

procedure, when section 41 makes other procedures available, including written representations and hearings. Equivalent procedures are set out in The Town and Country Planning (Referred Applications and Appal Procedure) (Wales) Regulation 2017 and which the Bill should be consistent with. While we recognise that in some cases where very complex evidence is required, consideration via an inquiry may be appropriate, if the overall timescale of 52 weeks outlined in section 56 is to be met, then it is our view that inquiry procedures should be the exception rather than the norm.

The period for determining the appropriate procedure under section 41 is to be set out in regulations. In our view this period of determination will need to be very prompt in order to ensure the overall timetable of 52 weeks outlined in section 56 is met.

Section 52 contains a mechanism to extend timescales beyond 52 weeks. Given the overarching purpose of the legislation is to achieve a consenting mechanism for timely delivery of major infrastructure in Wales, in our view but an extended time period should not be the norm given the overarching purpose of the legislation to achieve a consenting mechanism for timely delivery of major infrastructure in Wales.

Regarding the aim of meeting the 52 week period outlined in section 56, in the equivalent UK wide legislation the various stages of the examination, reporting and decision making process are broken down into smaller parts - see for example section 98 and 107 of the Planning Act 2008 which gives a separate timescale for completing the examination within 6 months of the start date, reporting within 3 months of the examination and a final decision being made within 3 months of the examining authority's report. Breaking down the overall 52 week period outlined in section 56 of the Bill would be helpful to ensure a timely decision on applications can be made.

Part 5 - Deciding applications for infrastructure consent

We support the ability for the examining authority to make decisions on developments of a specified kind outlined by section 52 of the Bill. This will assist in timely decision making. However, there should be further detail on whether that is intended to be a widely used power or a limited one. We would support drafting regulations to cover a wide range of significant infrastructure projects rather than being applied narrowly.

Section 53(1)(a) specifies the determining body must decide on an infrastructure

consent application in accordance with any infrastructure policy statement that has effect. In comparison, the Planning Act 2008 applies to Nationally Significant Infrastructure Projects, and section 104 directs the decision maker as to how applications should be decided where a relevant national policy statement has effect; and conversely section 105 directs how applications should be decided where there is no relevant national policy statement in place. Given the continued development of new technologies (particularly energy in recent years), we would suggest a similar section to section 105 of the Planning Act 2008 is added to the Bill, to enable the legislation to cover future projects where a national policy statement may yet be in place (for example, the production of hydrogen).

Part 6 - Infrastructure consent orders

We have no comments to make on the provisions of Part 6.

Part 7 - Enforcement

We have no comments to make on the provisions of Part 7.

Part 8 - Supplementary functions

We have no comments to make on Part 8.

Part 9 - General provisions

We note the proposals in section 141 and 142 and schedule 3 to repeal the provisions of Section 62 D - L of the Town and Country Planning Act 1990 (relating to Developments of National Significance (DNS)), and to make transitional provisions. Overall, we are supportive of these proposals. However, there should be further clarity on how these transitional provisions will work. This is an important issue for developers in the preparatory phase of preparing DNS applications. It is likely that major infrastructure projects in Wales will be subject to transitional arrangements and it is important to have timely progress, transparency and consultation in relation to any such arrangements.

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

There is a clear imperative for the Welsh Infrastructure Consent Regime to be implemented as soon as possible given, for example, Wales's growing role as a green energy nation. However much of the detail of the Bill is to be set out in regulations. It is therefore imperative there transparency and consultation on these regulations so the new regime is able to deliver major infrastructure on a timely basis. Furthermore, guidance to accompany regulations will need to be produced as quickly as possible to facilitate the effective operation of the new

consenting regime.

The swift progression of the draft infrastructure policy statements, (which will also require comprehensive and transparent consultation), is also key to the timely implementation of the Bill.

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)?

The regulations will need to be delivered in a timely and transparent way, following consultation.

Are any unintended consequences likely to arise from the Bill?

We have no comments to make.

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?

We have no comments to make on the financial implications of the Bill.

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

To plan appropriately for forthcoming infrastructure projects, we would welcome clarity on the following aspects and their timescales:

- Transitional Arrangements: as with the introduction of any new consenting process, there will be a period of change as projects, applicants and stakeholders align with a new regime. The potential consequence is that infrastructure projects could be delayed. To mitigate any delays, we would welcome clarity of the intended transitional arrangements as early as possible to understand the implications for emerging infrastructure projects.
 - National Policy Statements: we would welcome clarity on the production of any new national policy statements, as specified under sections 53 and 124 of the Bill, including their scope and timeframes. It is important for all stakeholders, including developers and consultees, to understand the policy requirements and expectations to be placed on infrastructure projects (not covered by existing policy) as early as possible.
 - Secondary Legislation: we understand that the Bill will be supported by secondary legislation, setting out much of the detail on pre-application
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consultation, optional SIP thresholds and fees. We would welcome clarity on timescales for the production and likely content of this secondary legislation, particularly on pre-application consultation requirements so that emerging infrastructure projects can properly plan ahead.
