

National Assembly for Wales
Environment and Sustainability Committee
PB 46
Planning (Wales) Bill
Response from UK Environmental Law Association



INTRODUCTION

1. The UK Environmental Law Association (UKELA) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. The organisation attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to UK Governments with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared by the Wales Working Party..
3. UKELA welcomes the, primarily evidence based, proposals to introduce a revised planning system that that is transparent, flexible, focused on continual improvement, appropriate for facilitating development that meets the needs of the people of Wales, and encourages collaboration. However, UKELA is keen to ensure that any legislative proposals do not diminish environmental protection measures. In this respect, UKELA is concerned about the absence of detailed information on how the planning system will help deliver national outcomes under the Well-being of Future Generations (Wales) Bill and support implementation of the Environment Bill proposals.
4. UKELA's views on the Bill's current provisions are set out below:

The requirement to produce a national land use plan, to be known as the National Development Framework

5. There appears to be a sound case for establishing a National Development Framework to support the preparation and development of LDPs; set the context for national policy objectives; and provide a tool for the delivery of natural resources and planning objectives. However, there are concerns about the abandonment of the notion of spatial planning as the concept is considered vital to developing an approach which clearly integrates economic, social and environmental concerns. It is, therefore, important

that the National Development Framework addresses planning for future generations and sustainable development in order to demonstrate clear linkages with the Well-being of Future Generations (Wales) Bill.

6. It is noted in the Bill's Explanatory Memorandum that there is an emphasis on providing businesses with opportunities to identify areas for development, whilst there is no reference to identifying areas for environmental protection and enhancement. In order to ensure that the three pillars of sustainable development are given equal status in any such framework there should be mention of the importance of identifying areas for environmental protection and enhancement in the legislation. .

The creation of Strategic Development Plans to tackle larger-than-local cross-boundary issues

7. If a strong and comprehensive National Development Framework is to be introduced for a relatively small country such as Wales, there does not appear to be a case for developing Strategic Development Plans (SDP) and establishing associated Strategic Planning Boards for particular areas. The need for Strategic Development Plans is not particularly evident and they have the potential to introduce an unnecessary layer of bureaucracy to the planning system. Furthermore, matters to be considered by the SDP will not necessarily include all relevant local planning issues and there is concern that some of issues to be considered may be more relevant for local determination.
8. Clarity is needed on how SDPs will link with LDPs and the local well-being plans to be developed by the new Public Services Boards proposed under the Well-being of Future Generations (Wales) Bill. It is suggested that any Strategic Planning Panels set up should have a responsibility to liaise with Public Services Boards.
9. It is pleasing to note that the areas for SDPs have not been identified in the Bill. UKELA has some concerns about strategic planning in areas that may not be covered by SDPs and whether SDP areas will be defined according to transport/economic features or environmental/natural resource management requirements, neither of which necessarily respects administrative boundaries.
10. There is a likelihood that planning for those areas not covered by Strategic Development Plans may be overshadowed and decisions on the areas to be covered by the plans may pre-empt those in the report of the Williams Commission on Public Service Governance and Delivery in Wales.
11. Overall, UKELA is concerned that there could be a danger of local issues not being given full weight if decisions are made on a wider geographical basis. In addition, care needs to be taken to ensure that Strategic Development Plans do not cover issues that are more appropriately dealt with at a local level.

Schedule 2A - Strategic Planning Panels (SSP)

12. This schedule, which details how the SPPs will operate, appears to place a great deal of power in the hands of Welsh Ministers in the following respects:

In providing regulations on the membership of SPPs: the Bill provides that the regulations are to stipulate (a) the total number of members of the panel, (b) the number of local planning authority members, and (c) the number of nominated members. In the interests of local democracy, UKELA's view is that only maximum numbers should be stated.

In appointing nominated members of the SPPs: the Bill provides that the Welsh Ministers will publish a list of persons who are to be nominating bodies and that if the nominating body nominates a person for appointment in response to a request from a strategic planning panel, the panel must appoint that person as a nominated member of the panel. In our view the Bill should be more specific about the nature of nominating bodies and the qualifications of nominated members in order to ensure that panels comprise individuals with appropriate skills and expertise.

13. The Bill should also give the SPP the discretion to decide whether or not to appoint a person suggested by the nominated body. Indeed, the initial appointments to a strategic planning panel under this paragraph are to be made by the local planning authority members of the panel; there does not appear to be a valid reason for deviating from this practice.
14. UKELA strongly agrees that the chair and deputy chair of a SPP should be appointed from its local planning authority members and that the meetings should be open to the public. However, the Bill should be specific as to where the notice of the meeting of the SPP and the record of business should be published to ensure complete openness and transparency. This is particularly important given Wales's obligation to ensure adequate public participation in environmental decision-making under the 1998 Aarhus Convention.
15. UKELA notes that local authorities are required to fund SPPs but must accept the calculation of costs provided by the Panel, which will, of course, include unelected members. The issue of accountability is very relevant here. UKELA is concerned about the limited provision for accountability of SPPs in the Bill; apart from basic reporting requirements to send copies of the financial reports and annual report to the constituent local planning authorities and Welsh Ministers, the only other provision is for financial accountability to the Auditor General for Wales.

Changes to Local Development Plan procedures

16. It could be argued that all local authorities are dependent to some extent on developments outside their immediate geographical boundaries and it is acknowledged that in view of the limited size of some authorities, and the current difficult financial climate, the case for the merger of LPAs could be justified provided that account is taken of availability of expertise and resources.
17. If it is decided to go ahead with Strategic Development Plans in addition to LDPs and powers are introduced for establishing joint LDPs, Wales could end up with a four tier development planning system, which appears excessive for a relatively small country and possibly lead to confusion over the status of SDPs and joint LDPs.

Front-loading the development management process by making provision for pre-application services

18. The aim of encouraging the use of pre-application services is to be welcomed, along with the proposal to make this compulsory for developments of national significance and other major developments. This should improve the efficiency of the planning system by reducing the number of “call in” applications and planning appeals. However, care will need to be taken to ensure that both statutory consultees and members of the public are given the opportunity to comment on development proposals at an early stage and that the latter group is equipped to respond fully within required timescales. There should also be care taken to ensure that the system encourages and not deters developers from coming forward with projects.

Introducing a new category of development to be known as Developments of National Significance that are to be determined by Welsh Ministers;

19. Providing a ‘one stop shop’ for developers in gaining planning permission and related permits for nationally significant development is clearly important to ensure a more effective system of approval. However, it is equally important to ensure that the decision maker on such consents has the necessary expertise to fully consider the impacts of proposals on the environment. Consultative processes that currently exist in the provision of such consents should not be by-passed by the transfer of power from specialist agencies to the Welsh Government.
20. The Bill grants Welsh Ministers very wide powers to declare that a consent, necessary for a development of national significance, should be decided by them (s62F); and there is no appeal against such a declaration. There is also a very wide power to require a ‘relevant person to do things in relation to a secondary consent’ (s62G); and to make regulations regulating the manner in which such consents are to be dealt with by Welsh Ministers that may include provision:
- (a) about consultation to be carried out by the Welsh Ministers before a secondary consent is granted or refused;

(b) requiring a person to provide a substantive response to any consultation carried out by virtue of the regulations.

21. UKELA believes that the basic requirements for consultation on such consents should be outlined in the Bill or that it should at least be a duty of Welsh Ministers to include this in regulations. There is also a very wide power for Welsh Ministers to direct LPAs to 'do things' in relation to applications for developments of national significance that would otherwise have been decided by them.

Streamlining the development management system

22. The introduction of the Planning Advice and Information Service (PAIS) and a competence framework for planners and elected representatives together with a core set of development management policies for consistent application should help in improving the efficiency and the effectiveness of the planning system in Wales. However, this view is predicated on there being a clear understanding of what is needed and that support services are developed to address these evidenced needs.

23. Whilst there may be circumstances in which it is appropriate for Ministers to intervene and take over the responsibilities of a poorly performing authority, there is an evident danger that the focus may be on time scales taken to reach decisions rather than the quality of the decision and the development outcomes for the local area.

Local Planning Authority Committees

24. The details of the provisions for this very important power to regulate LPA Planning Committees in the current Bill are written very broadly. Welsh Ministers can direct that any planning function be discharged by a committee, subcommittee or officer of the authority; and can 'prescribe the terms of the arrangements' for the discharge of functions by a planning committee. Welsh Ministers also have the power to make regulations prescribing "requirements relating to the size and composition of a committee or sub-committee by which a relevant function is to be discharged." This provides Welsh Ministers with significant power, which, together with the failure to set out the most effective size and composition of committees is of concern to UKELA.

Planning Hearings

25. Once again Welsh Ministers are provided with a wide power to prescribe the procedures to be followed in any inquiry, hearing or proceedings by way of written representation (s323A). This includes any (a) inquiry or hearing or (b) proceedings on an application, appeal or reference that is to be considered on the basis of representations in writing, which will cover, therefore, the procedures on applications for DNS and planning appeals.

There is no provision to protect the basic rights of individuals to make representations in these processes. The focus is only on the efficiency of such proceedings with reference to the power to include in regulations time limits for submitting representations in writing and any supporting documents; and generally for different classes of proceedings or an individual proceeding. Rules may also be introduced to enable Welsh Ministers to proceed to a decision, taking into account only such written representations and supporting documents as were submitted within the time limit; and to proceed to a decision even though no written representations were made within the time limit. This is of crucial importance and UKELA is very concerned that there is no reference in the Bill to the setting of minimum time limits in order to protect the rights of interested individuals.

Changes to enforcement and appeal procedures

26. UKELA has some concern about the absence of a third party right of appeals in such circumstances as approval for a development that contravenes the adopted development plan. We are of the view that a provision for third party appeals in clearly defined circumstances should be specified in the Bill.

The appropriateness of 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, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation)

27. There seems to be some inconsistency in making the passage of regulations under s.62D(3) of the TCPA 1990 (enabling Welsh Ministers to set criteria for Development of National Significance (DNS)) subject to the affirmative resolution procedure whereas s.62D(6) (enabling Welsh Ministers to describe the type of applications to be dealt with as Developments of National Significance) is subject to the negative resolution procedure (NRP). It is not clear that the latter is simply a technical matter – as stated, and presumably the justification for the use of the NRP. Surely the ‘type’ of application to be dealt with as a DNS must be one that satisfies the criteria for DNS. If one is a non-technical matter then surely so must be the other.

Dr Victoria Jenkins

Dr Haydn Davies

UK Environmental Law Association Wales Working Party

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