

Sustainability Committee

SC(3)-19-10 Paper 1

Inquiry into Planning in Wales - Evidence from IPC

7 October 2010

PLANNING IN WALES INQUIRY – WRITTEN STATEMENT

Introduction

- Introductions: Emrys Parry (Welsh Commissioner), Mark Wilson (Case Leader & leader of Welsh Group), Owain George (Bilingual Case Officer)

This written statement is given in the context of the Committee's letter dated 29th April 2010, and the Commission's response dated 9th June 2010 (Annex A) dealing specifically with the questions posed under the Committee's remit. The statement is intended to expand on the statutory position of the IPC specifically in relation to working in Wales, to update on the number of projects received or at the pre-application stage and to outline the organisational and communication activities the IPC has undertaken to give effect to the specific Welsh context. It concludes with an update on the position following the Ministerial statement of 29th June 2010 and how we are working during the transition period and into the future.

The IPC's Statutory Position in Wales under the 2008 Act

There are special provisions in the Planning Act 2008 applying only to Wales. Arrangements for doing business in Wales have been developed with the Assembly Government. We have also held initial discussions with the Welsh Local Government Association and other statutory consultees.

The context is the major infrastructure planning system established by the Planning Act 2008 (the Act), as it relates to the handling of all Nationally Significant Infrastructure Project (NSIP) proposals in Wales and England, including the territorial waters adjacent to Wales (i.e. up to the 12 nautical mile seaward limit).

With respect to policy, the 2008 Act gives special significance to the National Policy Statements. Once the relevant NPS has been designated by the Secretary of State, the IPC must determine applications in accordance with it unless certain considerations apply, for example that the adverse impact of the proposed development would outweigh its benefits. Statements of Welsh Government Policy, where relevant, will be important considerations for the IPC

Commissioners in their examination of applications. Given the significant number of applications expected for onshore wind farm development in Wales, the IPC recognise that existing policies and strategies¹ including Planning Policy Wales 2010 and TAN 8, which will be of particular relevance.

For all applications likely to affect land in Wales, applicants must consult the Assembly Government, the relevant Welsh Local Authorities, and a number of other Welsh bodies prescribed in regulations. These organisations will be interested parties who will be able to participate in the examination. Input from these organisations, including their views on the compatibility of the applicant's proposals with existing policy and guidance, will be important evidence which the examining authority will take into account.

The IPC will ensure that prospective applicants and other parties are aware from the outset of the particular ways in which the infrastructure planning system applies in Wales. This is relevant as there are a number of considerations in the legislation relating to Wales that are important to know in the drafting of a development consent order.

Key features of the Planning Act 2008 in relation to Wales include: the definition of NSIPs in part 3 of the Act, where some infrastructure projects in Wales (such as highway projects and rail projects) are not defined as NSIPs, and so cannot be consented by the IPC; planning permission cannot be deemed as part of the development consent order for associated development in Wales; consents such as listed building consent and scheduled monument consent cannot be deemed as part of the development consent order for NSIPs in Wales.

Further details are shown in information pack (See Annex B).

A Summary of Projects in Wales

Of the 51 projects currently listed within the IPC's Programme of Projects: 13 of those are located within Wales; 7 are onshore windfarms; 3 projects are offshore wind farms located off the Welsh coast or would be visible from Wales; 2 projects are overhead electricity line connections; and 1 project is an energy from waste facility. (See Annex C).

Significantly, the first application to be submitted before the IPC in a formal context was an application for an electric line connection near Neath. However, this was not accepted for examination for the reasons set out in our published letter².

¹ Including Planning Policy Wales (Edition 3, 2010); Technical Advice Note (TAN) 8: Renewable Energy (2005); Waste Strategy 2009 – 2050: Towards Zero Waste; A Low Carbon Revolution: Wales' Energy Policy Statement (March 2010); The Wales Transport Strategy 2008

²[http://infrastructure.independent.gov.uk/wp-content/ipc/uploads/projects/EN020004/2.%20Post-Submission/Procedural%20Decisions/100831_EN020004_Section%2055%20Decision%20\(English\).pdf](http://infrastructure.independent.gov.uk/wp-content/ipc/uploads/projects/EN020004/2.%20Post-Submission/Procedural%20Decisions/100831_EN020004_Section%2055%20Decision%20(English).pdf)

In respect to the type of projects currently at pre-application stage, the programme currently includes nine wind farms, one overhead line connection, an energy from waste facility at Merthyr and a nuclear power station at Wylfa, on Anglesey. As a result of these proposed schemes, 22% of the potential generating power of IPCs projects is in Wales.

Activities in Wales

The following list summarises our key activities in Wales, to date: (see Annex D for a fuller list)

- IPC in Wales: launch event (9th March 2010);
- Workshop with IPC and Assembly Government (10th February 2010);
- Hosted outreach events for NSIP schemes in Clocaenog and Merthyr Tydfil³ (from which we have already received positive feedback) and have two further events planned before Christmas (Aberystwyth in October and Carmarthenshire in late November);
- Attended Planning Aid Wales (29th-30th April) and a RTPI conferences (8th June 2010); both in Cardiff;
- Attended meetings with Wales LGA, Countryside Council for Wales, Assembly Government officers, DfT and RenewableUK Cymru Strategy Group and Annual Conference in Cardiff.

Memorandum of Understanding

The IPC has been working closely with Assembly Government officers to develop a Memorandum of Understanding (MOU), essentially a document that sets out the roles of the organisations with respect to infrastructure planning and how that system relates to Wales. The MOU also explains the working relationship and arrangements between the two bodies. This document has now been published (30th September) and will act as a guide to support the touch points between IPC and Assembly government in the IPC's development consenting process. A periodic meeting with IPC and Assembly Government officers will oversee the smooth running of interaction between the two parties in this process.

The IPC recognises the following principal distinctions in the role of the Assembly Government in relation to infrastructure planning,

- Its role in devolved areas of policy formulation for Wales;
- The direct regulatory functions it performs;
- Its role as the decision-maker for certain appeals and other consents;

³ Note that the Merthyr EfW facility outreach was hosted in Caerphilly

- Its duties in overseeing the operations of other bodies, including the Environment Agency and Countryside Council for Wales; and
- The context of the Assembly Government having a statutory duty to support and promote the Welsh language.

We are also keen to establish good practice in Wales, particularly through our relations with Local Authorities. Powys County Council, for example, has provided advice on how to prepare a Statement of Community Consultation. Our monthly Newsletter drew attention to this good practice⁴.

Organising for Work in Wales

The IPC has adopted the principle that in the conduct of its public business in Wales, it will treat Welsh and English languages on a basis of equality. Within this context, the Commission respects the requirements of Section 5 of the Welsh Language Act 1993, which states that every public body providing services to the public in Wales must prepare a Welsh language scheme. Consequently, the IPC adopted its own Welsh Language Scheme in November 2009 in consultation with the Welsh Language Board. The Scheme specifies the measures that the IPC will take to provide services to the public in Wales consistent with the principle that the conduct of public business and administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality.

The 2008 Act⁵ requires the contribution of Welsh Commissioners⁶ in the decision making process where projects relate to land in Wales. The Commissioners were selected through nomination of 8 of the 40 Commissioners by Welsh Assembly Government Environment Minister Jane Davidson. The nominations had regard to their understanding of Wales and the Welsh context.

To avoid any confusion on this point I should also explain that the statutory remit of the Welsh Commissioners is to contribute specialist expertise and knowledge relating to Welsh matters to the consideration and examination of NSIP proposals in Wales. It is not to directly represent the interests of the Assembly Government or other devolved bodies in Wales as if they were employees of the Assembly Government. And, like any other Commissioner, a Welsh Commissioner will be unable to comment on the merits of individual NSIP applications before an application is submitted.

We are arranging for regular briefing and information sharing between the designated Welsh Commissioners. This will ensure that the IPC and where appropriate the Assembly Government, are able to disseminate information about

⁴ <http://infrastructure.independent.gov.uk/wp-content/uploads/2010/05/Powys-SOCC-guide.pdf>

⁵ The Planning Act 2008, Part 6, Chapter 2, Section 70

⁶ Richard Davies, Eira Hughes, John Lloyd Jones, Bob Macey, Emrys Parry, Iwan Richards, Glyn Roberts, Bill Wadrup

the NSIP application process as it relates to Wales and to ensure that the Commissioners are regularly updated regarding the Welsh context.

Consistent to our objectives as outlined in the Welsh Language Scheme, the Commission has also recruited Welsh-speaking Case Officers who offer the capability to deal with Welsh language communication relating to casework affecting Welsh speaking communities. In addition, translation and bilingual presentation facilities have been provided at outreach events.

The Future

The Ministerial statement⁷ of the 29th June laid out the future for the IPC. It confirmed that Government wanted a planning system for major infrastructure which is rapid, predictable and accountable, but that decisions on major infrastructure applications should be made by Ministers, reintroducing democratic accountability in line with the Coalition Agreement. In abolishing the IPC the Government outlined that they will:

“establish a Major Infrastructure Planning Unit (MIPU) as part of the Planning Inspectorate (PINS), an existing agency of Communities and Local Government which will retain the strengths of the streamlined processes and the experience of the Planning Inspectorate”.

Abolition of the IPC will require primary legislation. It is expected that the Decentralisation and Localism Bill will have its first reading by late November 2010 and receive Royal Assent by autumn 2011. Vesting day for the new, combined MIPU and PINS is currently planned for April 2012 although this date will be brought forward if circumstances allow.

The overriding objective is the public interest and creating a planning system for major infrastructure which has the support of all concerned. To ensure this, any system of decision making must be fair, and seen to be fair, open and cost effective.

Although the decision-making of both organisations must remain impartial and inclusive, at the operational level co-ordination between the IPC and the Assembly Government is important. Focused working relations between the two organisations should ensure that: timescales can be met without undue organisational strain; and appropriate resources and priority are given to the processes involved.

Concluding remarks

⁷ Ministerial Statement on Planning reform 29th June
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100629/wmstext/100629m001.htm#10062944000016>

The IPC remains committed to the future with an impartial and inclusive approach to all projects, retaining its openness and transparency throughout. In Wales, our inclusive approach is reflected in our commitment to our Welsh language scheme and we are aware of plans for the Assembly Government to develop this.

Many NSIP proposals are coming forward and applications are now being received by the IPC. Applicants and interested bodies are engaging effectively and feedback is positive. Confidence in the process is increasing as a result.

All parties are learning that this is a new way of planning national infrastructure. Our experience is that Welsh projects are extending their time-lines to focus on the pre-application consultation stage prior to submission. This is often due to applicants realising the extent of the work needed to clarify matters with local authorities and communities before their applications are submitted.

The challenges will not sway us as we move into a new regime to become the Major Infrastructure Planning Unit as part of integration with PINS. And through the changes and beyond, we will ensure that we remain focused on Wales, respecting its unique status and language and being in tune to any future developments in devolved matters.

We await the publication of the revised drafts of the National Policy Statements on Energy and on any new statements. We will keep under review the relevant policy developments in Wales and seek to extend good practice in relation to engagement with stakeholders and local communities in particular. We are also interested in the Committee's future report on sustainability and the effective interactions of policy to inform us in our examination of future projects.

Dr Pauleen Lane CBE
Deputy Chair
Infrastructure Planning Commission

ANNEX A: Sir Mike Pitt's Response to the Welsh Assembly Sustainability Committee

9 June 2010

Ms. Virginia Hawkins
Sustainability Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA

Dear Ms. Hawkins

Draft IPC Evidence to the Welsh Assembly Sustainability Committee

I would like to thank the Assembly's Sustainability Committee for inviting the Infrastructure Planning Commission to submit evidence to its inquiry into Planning in Wales.

The IPC was established on the 1st October 2009, under the Planning Act 2008, to examine applications for development consent for Nationally Significant Infrastructure Projects (NSIPs). An important feature of the new infrastructure planning regime is the separation of the policy making process from the process of examining particular applications for development consent. It is clear that the IPC, as the body which will examine applications, has no remit to comment in any way on government policy.

For this reason, our evidence to the Committee will be limited to the effectiveness of the infrastructure planning regime in relation to the Committee's interest in the delivery of Welsh Government policy.

The IPC publishes on our website a list of the applications for development consent for NSIPs we expect to receive. At time of writing, there are 34 proposals on this list, of which nine are in Wales and a further four are off the Welsh coast or would be visible from Wales. The effective functioning of the IPC regime in Wales is therefore of considerable importance to your inquiry. While no applications for development consent have yet been determined under the new regime, it is important to consider now how effective it is likely to be in the respects identified by the Committee.

- 1. How are key Welsh government policy objectives reflected in national and local planning policies/guidance and local planning decisions? Do you think this approach is successful?***

The Planning Act 2008 gives special significance to National Policy Statements (NPSs). Once the relevant NPS has been designated by the Secretary of State, the IPC must determine applications for development consent in accordance with it. Statements of Welsh Government policy, where relevant, will be important considerations for IPC Commissioners in their examination of applications. Given the significant number of applications expected for onshore wind farm development in Wales, the Welsh Government policy TAN 8 will be of particular relevance. Nevertheless, Welsh

Government policies do not enjoy the special status of designated National Policy Statements, which in the event of any conflict between them must, by law, carry greater weight with Commissioners.

The relationship in Government policy documents between policies set by Government in Westminster and the policies of the devolved administration is not a matter for the IPC to determine. We do, however, take the view that greater clarity in that relationship would be helpful within the context of individual NPSs. We commented to the House of Commons Select Committee on Energy and Climate Change that while the differences between the different infrastructure planning regimes are appropriately acknowledged at different points in the energy NPSs (notably EN-3 section 2.2), it would be helpful for there to be a single analysis of how the policy framework differs between England and the devolved administrations.

2. How successful are current planning policies/guidance in helping planners to reconcile competing demands e.g. renewable energy vs landscape quality, economic growth vs climate change?

The draft National Policy Statements published to date provide guidance on a wide range of matters which IPC Commissioners will need to take into account when examining applications, and in our judgment are fit for purpose. We have drawn departments' attention to areas where in our view there is scope for greater precision and clarity in the NPSs, and we look forward to seeing any revisions which the new government decides to make in the drafts following the processes of consultation and parliamentary scrutiny.

It is neither possible nor desirable for NPSs or other policy statements of relevance to planning decisions to provide detailed prescriptive guidance on how to reconcile competing demands. In the case of NSIP applications, it must be for the examining authority to consider all the evidence presented in relation to a specific application on its merits, and formulate a reasoned decision or recommendation on the balance between the need for and benefits of the proposed infrastructure and any adverse impacts.

The role of consultees will be particularly important in this respect. For all applications in Wales, the IPC must consult the Welsh Assembly Government, the relevant Welsh local authorities, and a number of other Welsh bodies prescribed in statute. Input from these organisations, including their views on the compatibility of the applicant's proposals with existing policy and guidance, will be important evidence which the examining authority will take into account. We therefore consider that the new infrastructure planning regime will be effective in this respect.

I hope this evidence is of assistance to the Committee in its inquiry. We would be pleased to attend as witnesses and give evidence orally if that would be of further assistance.

Sir Michael Pitt
Chair

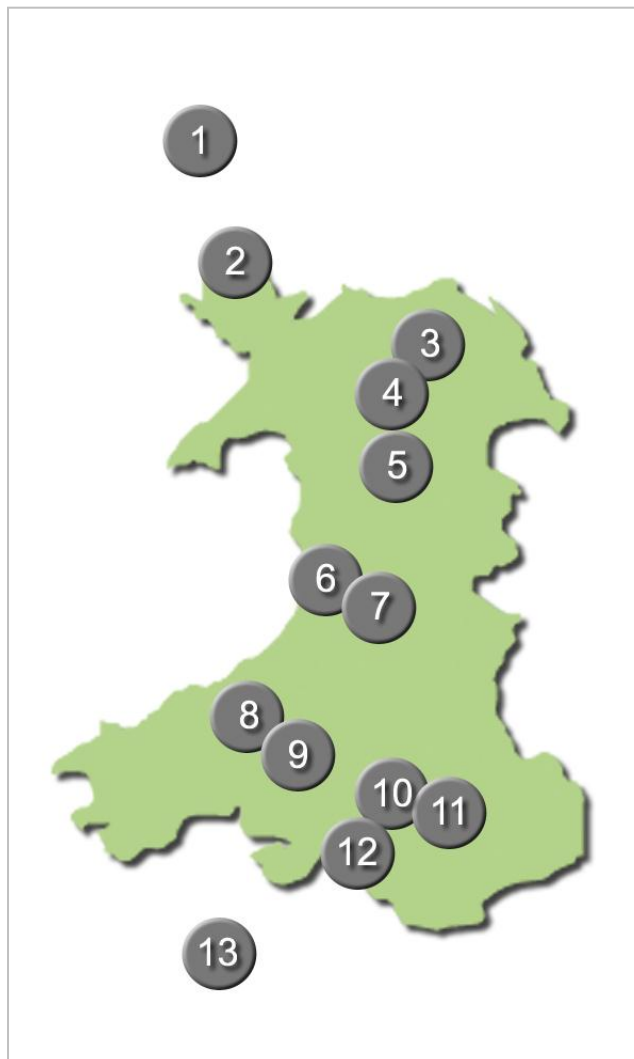
ANNEX B: Key Features of the Infrastructure Planning system as it applies in Wales

- The policy intention of the 2008 Act regime is to preserve the devolution settlement to Wales.
- The IPC will where appropriate and reasonably practical treat the English and Welsh languages on the basis of equality, in accordance with its Welsh Language Scheme.
- Under ss.15-30 there are fewer NSIP categories in Wales; these include:
 - Generating stations
 - Above-ground electric lines
 - Underground gas storage facilities, when in natural porous strata
 - Pipe-lines, other than gas transporter lines
 - Harbour facilities.
- In Wales 'associated development' for which the IPC can grant consent is confined to the carrying out or construction of surface works, boreholes and pipes associated with facilities for the storage of gas underground in natural porous strata (s.115). The IPC cannot generally give consent for aspects of an NSIP which could, in England, be treated as 'associated development'. Any necessary consents for works not integral to an NSIP must in Wales be obtained from the normal decision-making body.
- There is a Wales-specific list of prescribed s.150 consents/ authorisations, which may only be covered by a DCO (rather than being dealt with by the normal decision making body) if that body agrees (Part 2 of the Schedule to The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regs. 2010).
- As the normal decision-making body for some consents in the s.150 list the Assembly Government's agreement will be needed by applicants who wish to have such a consent covered by a DCO made by the IPC.
- The Assembly Government has a role in certifying, in accordance with sections 131 and 132, that land given in exchange for special category land (e.g. Common land) will be no less advantageous.
- For proposed NSIPs in Welsh territorial waters before April 2011, a DCO made by the IPC may include provisions deeming a CPA consent, but not a FEPA licence (ss.148 and 149). After April 2011, when FEPA licences and CPA consents are superseded by a marine licence, a DCO may not deem a marine licence in Welsh territorial waters since this will be the responsibility of the Assembly Government (s.149A).
- Under s.33 the need for certain consents/ permissions is removed when a DCO is being granted, but in Wales certain consents under Ancient Monuments & Archaeological

Areas Act 1979 and the Listed Buildings Act are still required from the normal decision making body.

- When an application at least partly in Wales is being decided by a Panel/ the IPC Council on the basis of a report by a single Commissioner, the IPC Chair, in appointing Commissioners, must ensure if reasonably practicable that at least one of the members of that Panel or Council is nominated by the Assembly Government (s70 and Schedule 1 to the Act).
- The Assembly Government must be consulted by applicants on all proposed, submitted and accepted applications 'likely to affect land in Wales' since the Assembly Government is a 'statutory consultee' (ss42 and 56 and Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009).
- The Assembly Government is a 'consultation body' for all proposals 'likely to affect land in Wales' in relation to scoping requests by applicants to the IPC (Regulation 8, the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009). The IPC will also consult the Assembly Government on EIA scoping requests concerning NSIP proposals in Welsh borders and territorial waters and on all nuclear proposals.
- Under s.102 the Assembly Government will be an 'interested party', which allows participation in the examination phase of any accepted application 'likely to affect land in Wales'.

ANNEX C: NSIPs in Wales



	Project Location	Proposal	Estimated Output (MW)	Applicant	Expected Submission
1	Irish Sea (20km off Isle of Man, 15km off Anglesey, 40km off Cumbria)	Irish Sea offshore wind farm	4200	Centrica energy	TBC
2	Wylfa, Anglesey	New nuclear power station	5300	Horizon	Q1-2012
3	Clocaenog, Denbighshire	Wind farm	64-96	RWE NPower Renewables	January 2011
4	Mynydd Mynyllod, Denbighshire/Gwynedd	Wind Farm	50-75	Scottish Power Renewables	Summer 2011
5	Dyfnant Forest, Powys	Wind farm	80-120	Scottish Power Renewables	November 2010
6	Nant-y-Moch, Ceredigion	Wind farm	140-176	SSE Renewables	February 2011
7	Mynydd y Gwynt, Y Foel nr Llangurig, Powys	Wind farm	69	Renewable Energy Holdings and Mynydd y Gwynt Limited	April 2011
8	Llanllwni, Carmarthenshire	Wind farm	50	RES UK and Ireland	February 2011
9	Brechfa, Carmarthenshire	Wind farm	107.5	RWE NPower Renewables	Q1 2011
10	Banwen Neath - Connecting Maesgwyn windfarm	132,000 volt overhead electric line to connect Maesgwyn Wind Farm		Western Power Distribution	Acceptance Stage
11	Brig y Cwm, Merthyr Tydfil	Waste combustion plant	77	Covanta	November 2010
12	South Wales (East of Swansea)	New overhead line connections		National Grid	November 2011
13	Bristol Channel (16km off S. Wales coast)	The Atlantic Array off-shore wind farm	1500	RWE NPower Renewables	April 2012

ANNEX D: Overview of IPC activities in Wales since 1st October 2009**2009 - Recruitment of Core Commissioners**

- Includes 2 of the 10 Core Commissioners born and brought up in Wales and with in depth knowledge of circumstances in Wales. A further 2 Core Commissioners have undertaken extensive work in Wales.

Winter 2009 - Introductory Meetings with WAG Officers and Environment Minister

- Introductory meetings in Cardiff of IPC Secretariat representatives and a Core Commissioner with WAG officers to establish working links, clarify legal and operational issues and identify where operational protocols, joint working or briefings required
- Introductory Meeting of IPC Chair, a further Core Commissioner and one of the IPC Directors with WAG Environment Minister Jane Davidson and her adviser Matthew Quinn in London to provide assurances on how the IPC intends to operate in Wales, IPC guiding principles etc

November 2009 - Preparation of the IPC Welsh Language Scheme

- Voluntary scheme setting out the service standards and protocols the IPC will follow in delivering our services in Wales to Welsh speakers
- The Scheme was formally adopted in April 2010, following scrutiny from the Welsh Language Board

November 2009 - Introductory Welsh Language Information on the IPC and the new Infrastructure Planning process

- Production of introductory leaflet and website content in Welsh and English

2009-10 - Follow-up meetings and joint seminars/workshops with WAG Officers

- Follow-up meetings and workshops between IPC officers and Commissioners and WAG Officers in Bristol and Cardiff to explore potential legal and operational issues

2009-2010 - Meetings with Stakeholder Organizations working in Wales

- Countryside Council for Wales
- Welsh Language Board
- Environment Agency
- Health and Safety Executive and National Nuclear Inspectorate
- Welsh Local Government Association

Outreach Work with Developers and Local Authorities

- Contact with and Briefing of individual Local Authorities in Wales (introducing the IPC and scoping the scale and nature of the Commission's likely work programme in Wales)
- Local Authority Briefing Event in Aberystwyth

March 2010 - Formal Launch of the IPC in Cardiff

- Launch event and conference attended by WAG Environment Minister Jane Davidson and speakers for a number of Welsh stakeholder organizations in the public and voluntary sectors.

March 2010 - Letter to Welsh Assembly Members

- Letter sent by IPC Chair to all Welsh AMs offering face-to-face discussion and explanation of the new 2008 Planning Act process, together with the IPC's role and responsibilities and how it will operate in Wales

2009-10 - Recruitment of Registered Commissioners

- Around 30 Registered Commissioners recruited to work on a 'call-off contract' basis.
- Of these, 3 are fluent Welsh speakers (John Lloyd Jones, former Chair of Countryside Council of Wales, Eira Hughes who originates from Gwynedd and was Head of Policy for CCW before a career in central Government and Richard Davies, formerly of WAG who amongst other functions was previously lead officer for the WAG Department of Environment, Sustainability and Housing). A number of others have experience of work in Wales.

August 2010 - Welsh Ministers nomination of 8 'Welsh Commissioners'

- WAG Environment Minister Jane Davidson has recently confirmed the names of the nominated statutory 'Welsh Commissioners' to the Department of Communities and Local Government.
- In taking a decision on any NSIP proposal in Wales the 2008 Planning Act requires at least one Welsh Commissioner to be part of the decision-making body to ensure that matters of interest to Wales are taken into account fully.
- The names of these nominees are:

Richard Davies	Eira Hughes
John Lloyd Jones	Bob Mace
Emrys Parry	Iwan Richards
Glyn Roberts	Bill Wadrup

- This list includes 4 Commissioners who are fluent Welsh speakers, a Core Commissioner who is not fluent but has basic Welsh language skills and is developing these further and three other Commissioners. This resource provides a pool of expertise offering excellent knowledge of Wales and of planning matters of great importance to Wales.

May/June 2010 - Recruitment of Welsh Speaking Casework staff

- Two Welsh speaking casework staff have been recruited into the IPC Casework team. They offer a capability to deal with Welsh language communication related to casework affecting Welsh-speaking communities. They have experience of work in local authorities and a national park authority.
- A number of other staff have excellent knowledge and experience of work in Wales, including work for the Welsh Assembly Government and relevant environmental consultancies.
- Opportunities will be taken to strengthen the complement of Welsh-speaking staff as the organization develops its capabilities. This will be a consideration in the proposed integration with the Planning Inspectorate.

Outreach work on Individual NSIPs at Pre-application Stage

- The following outreach events have been or are being arranged in relation to NSIP casework in Wales:
- Project related outreach events in Clocaenog and Merthyr Tydfil, with further outreach events arranged for Aberystwyth (October) and Carmarthenshire (November).

September 2010 – Memorandum of Understanding between IPC and Welsh Assembly Government

- Sets out detailed operational protocols to establish the framework within which IPC and WAG will work together on matters relating to NSIP proposals in Wales.