

Infrastructure 03, FSB Wales

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 Ffederasiwn y Busnesau Bach Cymru | Federation of Small Business Wales

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?

FSB are responding to this consultation based on FSB Wales's general approach to infrastructure. We do not have the necessary direct experience of the consent procedures to respond with evidence beyond the general. As such, we are responding only to the question around 'general principles of the Bill', as this is the part where FSB Wales may have useful evidence.

FSB Wales largely agree on the general principles and intentions of the Bill, and that there needs to be legislation to help deliver on its intention.

However, our view is that the rationale underpinning the bill and the problems it seeks to address as outlined in the explanatory memorandum, require a wider approach for the stated policy intentions to be delivered in full.

The principles outlined should therefore be used to explore the wider needs of planning and decision making. These should include the wider long term strategy and institutional architecture for infrastructure decision-making, and to assess infrastructure projects at all levels. Looking to use this lens to ease planning impacting on local communities throughout Wales could provide for economic development during the current economic crisis and build for recovery.

FSB Wales have written extensively on the impact infrastructure has on SMEs, and how failure of projects will impact on SMEs. You can find this in our work 'Are We

There Yet?: A Road Map to Better Infrastructure For Wales',¹ and this wider approach is also reflected in our recent report on roads strategy in Wales 'Different Routes, Same Destination: A Road Policy to Drive Sustainable Development of the SME Economy'.²

Impact On SMEs

The Explanatory Memorandum notes that an average of only 6 applications per year for significant infrastructure' are received - the direct impact on SMEs developers is therefore limited. However, as with individual citizens, SMEs are dependent on good infrastructure by comparison to larger companies, especially at the smaller end of the scale. This is because those businesses are likely more embedded in their communities and so cannot (or do not want to) move to other areas where they would gain advantage from better or cheaper infrastructure, utilities, transport and so on.

SMEs are also more dependent on wider infrastructure to allow them to compete based on time and cost (e.g., through faster broadband or transport) which impacts on their competitiveness. As such, the efficient delivery of infrastructure across all levels is important to SMEs in general.

Modern, well-functioning and reliable infrastructure across all its forms is essential in growing economic confidence for businesses based in Wales as well as projecting a positive prospectus for attracting business and investment from outside Wales. This will be no more obvious than in the city and growth deal investments, Freeports and any potential Investment Zones which may be announced for Wales.

Infrastructure projects can also provide spin off results such as trade, services, innovation opportunities and skills development, in potentially building local capabilities and capacity within SMEs. As such, to provide clear lead in time for businesses to grasp opportunities, it is important that there is clarity and certainty that projects will be delivered, what the opportunities will be and when, and that the opportunities, and certainty that projects will not be pulled back depending on the political tide and day to day politics.

It is in managing all these potential benefits that infrastructure governance and decision-making are key areas of concern. As such, the efficient and successful

¹ L ap Gareth, 'Are We There Yet: A Roadmap to Better Infrastructure in Wales' (FSB: 2019)

<https://www.fsb.org.uk/resources-page/arewethereyet.html>

² L ap Gareth, 'Different Routes. Same Destination' (FSB: 2023), available at

<https://www.fsb.org.uk/resource-report/different-routes-same-destination.html>

delivery of infrastructure projects on every scale is of relevance to many SMEs, and engagement on them is vital to ensure the potential benefits to local economies.

Principles of Bill

The principles of the bill and what it is looking to achieve are rational. The explanatory memorandum shows the main problems around the complexity and uncertainty of timelines all making for difficulty in delivering projects. However, it is FSB's view that overarching governance beyond this bill, alongside a clearer strategy and institutional infrastructure is necessary for it to realise its wider aims.

The discussion on the challenges and problems is a useful one and brings to bear the legislative proposals to long existing problems when looking at consent measures to infrastructure projects.

FSB therefore agree with the points raised as issues to be addressed in the Bill:

- That 'The timely and effective delivery of major infrastructure and low carbon development in the right locations requires simplified and efficient consenting arrangements.'
 - That there needs to be 'a unified consenting process for infrastructure projects in Wales'.
 - That 'pre-application consultation with both statutory consultees and local communities is not widely undertaken' and that 'this can result in members of the public sometimes feeling they have been unable to engage on the development of a project' leading to examinations being 'challenging in that unknown issues can arise during an inquiry.'
 - That 'For many regimes, there is no clear policy to underpin the decision-making process. This may cause different weight or interpretation of policy, or it being apportioned inconsistently on a case-by-case basis and could provide uncertainty to potential applicants on the policy basis for development.'
 - That 'This lack of unified consenting can cause duplication of work. This can significantly increase the costs of applications and acts as a barrier to development, and cause frustration and confusion to those participating in the process.'
 - That "Current consenting process can often be onerous and take a significant and unpredictable amount of time to be determined, given there are no statutory timeframes for current processes. This can generate
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uncertainty for all parties, imposing significant costs as well as potential planning blight. Furthermore, the delay in the delivery of key infrastructure can have harmful impacts on communities, businesses, the economy, and the environment, and in some cases, deter future development. This may threaten Wales's ability to deliver the required infrastructure to continue to develop and attract further investment.”

- That a one stop shop approach is better for clarity and for timely decision making

FSB Wales would also agree that it is the correct approach that the overall objective and purpose of the Bill be to ‘unify existing consenting regimes’ on the following basis identified:

- Consistency – To enable the public and developers to engage with a single process across all infrastructure types, providing administrative efficiency for decision-makers and familiarity with those who engage with it, which will reduce delays.
 - Certainty – To provide certainty in terms of timescales for all involved, so that the public are clear on when decisions are made, proceedings are not unnecessarily prolonged, and to enable developers to plan projects with more accuracy.
 - Chances of success – To provide a clear strategic and policy framework on which decisions are made to enable a developer to know their prospects of success in advance of an application for consent being made.
 - Quality of applications – To provide minimum bars in terms of preapplication consultation and submission requirements to enable decision-makers to better ascertain the impacts of development from the outset, while providing more informed information to the public.
 - Confusion – To provide a more consistent and inclusive process, which enables those who are not familiar with engaging with the planning process to engage more effectively.
 - Complexity – To enable a developer to obtain all the authorisations and consents it needs to implement a project, removing the need for the public to engage with multiple consenting processes, and lowering overall costs for all.”
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These broadly match FSB's analysis of problems for infrastructure (see below) and so is a rational approach to consenting processes, and to its simplification. We would note that this approach will need to be across the infrastructure strategy and governance, in particular so that there is a better policy and strategic framework in place that aligns clearly to the goals.

Link to wider infrastructure governance

It is of some concern that the explanatory memorandum makes no reference to any 30-year strategy, and that NICW as the institution that was supposed to tie these matters together is not mentioned and does not turn up in the list of abbreviations. This is an indication that there has been a lack of clarity regarding the overarching roles and of a one stop shop approach at this level.

As such the clarity sought around what is meant for 'success', what amounts to certainty about types of projects may not be clear to all, including to the public and SMEs who form an important part of engagement early in the process. As the explanatory notes discuss, the public should not be engaging with multiple processes. However, there needs to be a dialogue with the public – and local businesses – at a level where that is appropriate. This should be early enough to ensure buy-in, to mitigate against any criticisms, which may occur and scupper a project later. This requires clearer communication at the higher level of strategy and a 'story'.

FSB Wales would also note that the problems articulated as issues for the bill to address are problems encountered by all developers within planning system, at all levels of infrastructure projects and not merely for Significant Projects. In order to deliver on infrastructure needed to achieve Welsh Government aims, it is important that planning be simplified. This is also a major lever that could provide a boost to SME developers and communities in the current economic crisis. It would also provide for multiplier effects in employment and community benefits if time and cost are reduced and projects are brought to fruition quickly.

We would also caution, however, that while statutory timelines are useful, they do not in themselves guarantee delivery. Anecdotally SME developers have noted that processes for determination are often shifted or started again arbitrarily, and a lack of capacity within planning departments has led to Welsh Minister writing to stakeholders noting delays to planning timelines. In other words, the institutional capacity must match the aims of the regulation and that lack of capacity is often the cause of delays – making timelines statutory without regard for institutional capacity may therefore not sort the problems out.

Nevertheless, the principles underpinning the bill at least brings to bear the need for more consistency, speedier procedures to encourage needed infrastructure development, and to ensure all parties understand the process in place.

The FSB's position has been that there needs to be a view of governance in infrastructure decision making that provides a wider remit that then underpins the consent process.

As such we agree on the Bill's rationale for a one stop shop approach but would extend it further than on consenting procedures to provides underpinning long-term planning to deliver on very of complex and costly projects to benefit our members remains to be seen and is an open question. The rationale for this bill appears to tidy up complexity and process in consenting procedures for particular infrastructure projects, with better clarity on responsibilities. However, it does not link across governance to an overarching 30 year strategy (which has been produced but appears to have been sidelined in practice), providing consensus and stability of approach over the long term and across political electoral cycles, and also in terms of understanding how this links to better financing and bringing in investment for projects (e.g. through a body such as NRW, NICW, Development Bank etc).

FSB Wales produced a report looking at infrastructure in Wales, and identified similar major risks that prevent success to those outlined in the explanatory notes for the bill:

- Lack of overarching forward-thinking strategy
- Failure to secure consensus, creating high political risk.
- Weak evidence base and lack of trust
- Community opposition and lack of effective engagement³

These broadly reflect the principles of the Bill, and FSB agree with its general principles. However, we wish to see those principles providing a lens through which to look at the best means for achieving better infrastructure from a higher strategic level and would encourage Welsh Government (or any future Welsh Government) to do so too.

Arm's length body

FSB Wales advocate a clear, independent system that allows for long-term stability and consistency in decision-making for what are long term and complex projects.

FSB Wales suggest that an arm's length body on infrastructure could provide a model - our recommendation has been for a fully statutory and resourced National

³ <https://www.fsb.org.uk/resources-page/arewethereyet.html>

Infrastructure Commission for Wales (based on success elsewhere such as the Danish Infrastructure Commission). However, these functions may be provided by another body – the main point is that there is a central point for coordination that is statutorily independent and resourced to provide that policy institutional architecture. While beyond the scope of this Bill, it remains the case that the consenting procedures require a clearer strategic and institutional framework above where this bill sits.

NICW was established in 2018, is a body with currently little resource, capability or authority and has clearly been bypassed in even the limited functions it is meant to take on in feeding into areas such as the Transport Strategy. We recommend that NICW be constituted as a fully autonomous statutory body charge with delivering on infrastructure.

The bill provides a discussion of a one stop shop for consenting procedures, but we also wish Welsh Government to further explore the rationale outlined for this Bill to its wider context and its wider implications. For FSB, it is to address the problems outlined through that central point of coordination for providing a long-term strategy, building the evidence base, engagement, bringing in financing and delivering on projects.

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

No response

Part 2 - Requirement for infrastructure consent

No response

Part 3 - Applying for infrastructure consent

No response

Part 4 - Examining applications

No response

Part 5 - Deciding applications for infrastructure consent

No response

Part 6 - Infrastructure consent orders

No response

Part 7 - Enforcement

No response

Part 8 - Supplementary functions

No response

Part 9 - General provisions

No response

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

No response

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)?

No response

Are any unintended consequences likely to arise from the Bill?

No response

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

No response

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

No response.
