

## Infrastructure 22, NFU Cymru

---

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 NFU Cymru | Evidence from NFU Cymru

---

### 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?**

---

NFU Cymru champions Welsh farming and represents farmers throughout Wales and across all sectors. NFU Cymru's vision is for a productive, profitable, and progressive farming sector producing world renowned climate-friendly food in an environment and landscape that provides habitats for our nature to thrive. Welsh food and farming delivering economic, environmental, cultural, and social benefits for all the people of Wales whilst meeting our ambition for net zero agriculture by 2040.

Large scale infrastructure has considerable potential to impact on Wales' farmers and our rural areas and so the Union's members throughout Wales have a significant interest in the Infrastructure (Wales) Bill and its provisions

NFU Cymru welcomes the opportunity to provide the Climate Change, Environment and Infrastructure Committee with a written submission as part of its Stage 1 consideration of the Bill. Our views as outlined in this consultation response are based on our current understanding of the Infrastructure Bill as introduced and these views may well evolve further as our knowledge and understanding develops and also as the Bill itself is amended as part of the scrutiny process.

As a general observation, NFU Cymru would make the point that we would like to see additional detail on the face of the Bill about the use of regulatory powers and Ministerial discretions. In relation to process and timeframes, rather than see these matters pushed back into secondary legislation, we would like to see these matters provided for in the Bill itself.

---

We look forward to working with the Senedd over the coming weeks and months as this piece of legislation journeys through its various legislative stages, and we are pleased to offer the following observations at the start of that process.

**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**

---

Part 1 – Significant Infrastructure Projects (Sections 1 – 18)

Section 2 – Electricity Infrastructure

Section 2 sets out the circumstances in which electricity infrastructure will be a Significant Infrastructure Project (SIP). This includes the installation of above ground electric lines with a nominal voltage of 132KV and a minimum length of 2km.

NFU Cymru consider that provision should be made to include at Section 2(e) large-scale underground transmission cables within the definitions set out at Part 1 of the bill. NFU Cymru take the view that these large-scale installations warrant a full examination in line with the procedure for other large scale infrastructure projects under the new proposed regime for national infrastructure in Wales.

Section 7 - Highways

At Section 7(3)(c) we would like an explanation as to what is meant by a 'significant effect on the environment'. In terms of what is considered significant, how will this be measured; and will there be clear criteria set out for making a determination as to whether something is significant. We would ask whether the meaning of the environment is to be understood in a broad or a narrow sense. Would this for example capture any impact on agricultural land??

We are also mindful of the potential intersect between provision relating to national infrastructure and the provisions of the Well-Being of Future Generations (Wales) Act 2015 (WFG) and the focus on improving economic, social, environmental and cultural well-being goals as part of the sustainable development principle.

Section 8 - Railways

At Section 8(1)(a) where reference is made to a railway which will 'start, end and remain in Wales', we would welcome clarification as to whether the intention is

---

for this to include development 'wholly' in Wales in accordance with the reference to cross-border projects at Section 18.

#### Section 12 – Dams and reservoirs

At 12(a) the figure stated for the construction or alternation of a dam or reservoir in Wales considered to fall within the scope of the bill is 10 million cubic metres; however we note that the comparable figure for England in the Planning Act 2008 is 30 million cubic meters.

Further to this, in respect of Section 12(a) and (b), we would ask if any consideration has been given to looking at the dam or reservoir's deployable output when it comes to determining if the development is a significant infrastructure project..

#### Section 13 – Transfer of water resources

At Section 13(e), we note that this provision does not include the transfer of drinking water; for the avoidance of doubt it would be useful to have some clarification as to what type of water this development might relate to.

#### Section 17 – Power to add, vary or remove projects

Section 17, we note that there is a power, by regulations, to add new types of infrastructure projects under the fields listed at (4), which includes the fields of flood prevention and minerals. Under Part 1, there does not appear to be any criteria as to what would constitute a project falling under the fields of flood prevention and /or minerals. It could import greater clarity if provision is included within the bill to define the criteria for the type of development that would fall under these fields (as is the case for other fields listed, which are set out in Sections 2-16).

In the absence of any such defined parameters within the Bill, NFU Cymru would suggest that of section 17 power should only be used following consultation with other stakeholders.

#### Section 18 – Cross-border projects

In relation to cross-border projects under Section 18, for the avoidance of doubt it would be useful to set out that infrastructure consent will only be required for the part of the development situated in Wales.

### **Part 2 - Requirement for infrastructure consent**

---

## Part 2 – Requirement for Infrastructure Consent (Sections 19 – 26)

Section 22 – Directions specifying development as a significant infrastructure project.

In relation to any direction given pursuant to Section 22(1) and specifically any type of project specified in regulations pursuant to S.22(2)(c), NFU Cymru takes the view that any such direction should make reference back to the fields set out at 17(4) and apply only in respect of business and commercial projects.

At Section 22(2)(b) it is unclear precisely what the parameters of a project of national significance to Wales are considered to be; this could also refer back to the fields set out at 17(4) as well as business and commercial projects and /or to the types of projects defined as ‘significant infrastructure projects’ at Section 1, Part 1.

Section 24 – Directions specifying that a development is not a significant infrastructure project

There is a strong degree of subjectivity with regard to the discretion given to Welsh Ministers under Section 24; Welsh Ministers have discretion to determine that a project caught by the provisions of this bill will not be treated as a significant infrastructure project under Part 1. We are concerned that there does not appear to be any criteria governing the circumstances as to when a project may not be treated as a significant infrastructure project despite otherwise being caught by the provisions of the bill.

## **Part 3 - Applying for infrastructure consent**

---

Part 3 – Applying for Infrastructure Consent (Sections 27 – 38)

Section 28 – Obtaining information about interests in land

Sections 29 – Notice of proposed application

Section 30 - Pre-application consultation and publicity

Section 32 – Deciding on the validity of an application and notifying the applicant

Section 38 – Consultation post-application in relation to compulsory application

As stated above, and as a general observation in respect of these sections, we would welcome a writing into the Bill of further provision around process and

---

timeframes so as to bring about more legislative certainty and create a more streamlined approach to these types of projects. It is worth noting that the Bill seeks to push back to regulations, the sort of details which are set out within the Planning Act 2008 with respect to England. We would question whether it is appropriate that these matters should be left to secondary legislation.

By way of example, referring to Section 28(5) as an example, we see no reason why details around the form and content of the notice, service and timeframes for a response to the notice could not be provided for within the Bill, particularly where provision is made later in the Bill, at Section 109, in respect of timings for an offence in connection with a failure to comply with such notice.

NFU Cymru considers that the period for compliance in respect of a notice under Section 28(5) should be no less than 21 days, with discretion for longer periods to be set.

Section 28(8) renders a person guilty of an offence under this section liable on summary conviction to a fine. We would expect to see this provision extended to set the maximum for any such fine, for example limited to level 5 on the standard scale.

Again, under Section 29, we consider that some of the detail to be set out within regulations could be stated within the Bill i.e. requirements under Section 29(2), 29(3), 29(5).

Turning to Section 30(d), we would expect any time allowed for a response to the pre-consultation to be a minimum period of 28 days.

At Section 30 (3) we would suggest that there should be a requirement for publicity in local and national newspapers.

Section 32(1) NFU Cymru take the view that the Welsh Ministers should be required to decide whether or not to accept an application as valid under this section within 28 days.

#### **Part 4 - Examining applications**

---

Part 4 – Examining Applications (Sections 39 – 51)

Section 39 – Appointing an examining authority

---

In relation to Part 4 generally, we note that regulations may make further provision, for example in relation to the appointment of a person / panel as examining authority under Section 39(5) and 39(6). For completeness, in our view, it would be useful for such provision to be set out within the Bill.

Section 41 – Choice of inquiry, hearing or written procedure

Section 42 – Examination procedure

With regard to the proposed examination procedure, specifically the choice of inquiry, hearing or written representations under Section 41 and 42, we can see the benefit of a hearing, including open-floor hearings, in circumstances where a specific issue is to be considered in detail or to afford an interested party an opportunity to make representations and, where requested, in applications involving compulsory acquisition. However, we have concerns regarding the discretion given to the examining authority which would potentially avoid the need for written representations. Specifically, we have concerns that the option of a local inquiry would not provide the same opportunity for scrutiny as would be the case under a full examination with written representations and oral hearings.

NFU Cymru consider it would be best to have a clear procedure involving written representations and hearings where appropriate. This would give more certainty and allow for proper scrutiny at the examination stage.

Further, we would like to see provision establishing a clear procedure, including timeframes. For example, a 6-month period applies under Section 98 of the Planning Act 2008 in respect of England, along with reporting timeframes and related provision. In relation to section 42 we would expect a time limit to be set (42(4)(a) and a process allowing for outline and full written representation, notwithstanding that these matters appear to be pushed back to secondary legislation.

Section 43 – Power to enter land as part of examination

At Section 43, NFU Cymru would expect provision to be made for this power and/or access to land to be subject to seeking to obtain the consent of the landowner / occupier.

---

## Section 44 – Power of examining authority to hold local inquiry

As stated above, NFU Cymru has concerns as to the level of scrutiny provided for through a local inquiry process, which could be less than expected for projects of this size.

## **Part 5 - Deciding applications for infrastructure consent**

---

### Part 5 – Deciding Applications for Infrastructure Consent (Sections 52 – 59)

NFU Cymru's concerns regarding lack of information on the face of the Bill and the way many matters are pushed towards regulations under the Bill's provisions are particularly strongly felt in relation to Parts 4 and 5 of the Bill. We would draw the Committees attention in particular to the the panel and examining authority provisions, important matters which are left to secondary legislation.

### Section 52 – Function of deciding application

We are mindful of the intersect between Sections 52, 53 and Section 19 (the requirement for consent of the Welsh Ministers for development forming part of a significant infrastructure project) and we note the intention for regulations specifying the kind of development for which the examining authority has the function of deciding infrastructure consent applications.

With the above in mind, and specifically in respect of 52(1), we would request clarification as to what types of infrastructure consent applications Welsh Government envisage being specified in regulations with the potential for the examining authority to have the function of deciding such applications.

Instead of the bifurcated approach outlined in 52(1) and (2) whereby an examining authority will decide on some applications and Welsh Ministers will decide on others, NFU Cymru's preference would be for an examining authority to report and recommend on all applications for infrastructure consent and leave all final decisions to Welsh Ministers.

### Section 56 – Timetable for deciding application for infrastructure consent

In respect of timings (at Section 56(1)(a)), we would want to see a breakdown of the 52-week period. We note the intention under 56(2) however we are unclear as

---

to the reasons behind provision around timeframes not being included within the bill at this stage.

#### Section 57 – Grant or refusal of infrastructure consent

At Section 57(3), NFU Cymru would want to see a process whereby an examining authority is required to report to Welsh Ministers, for the application to then finally be decided upon by the Welsh Ministers.

#### Section 59 – Reasons for decision to grant or refuse infrastructure consent

See above in respect of Section 59(2).

### **Part 6 - Infrastructure consent orders**

---

#### Part 6 – Infrastructure Consent Orders (Sections 60 – 99)

#### Section 61 – Purpose for which compulsory acquisition may be authorised

In relation to compulsory acquisition, we would expect land take to be no more than needed for completion of the works.

#### Section 75 – Keeping electric lines installed above ground

As stated above, NFU Cymru would want provision to be made within this bill for Significant Infrastructure Projects to include major underground transmission electric cables.

### **Part 7 - Enforcement**

---

#### Part 7 – Enforcement (Sections 100 – 120)

#### Section 109 – Offences of failing to comply with information notices

At Section 109(1) we would like to see the period of time increased from 21 days to 28 days given that this involves a criminal offence.

### **Part 8 - Supplementary functions**

---

#### Part 8 – Supplementary Functions (121 – 129)

---



---

## Section 122 – Powers of entry to survey land

Section 122(9) renders a person guilty of an offence under this section liable on summary conviction to a fine. As stated above at point [20], we would expect to see this provision extended to set the maximum for any such fine, for instance, under the Planning Act 2008 this would be limited to level 3 on the standard scale.

---

### **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)?**

---

As a general principle, NFU Cymru is of the view that there should be as much detail as reasonably possible on the face of the piece of primary legislation. Given the low level of scrutiny that secondary legislation is generally subjected to, we are not keen on Ministers taking extensive powers for themselves via secondary legislation. We would at the very least like to see additional details on the face of the Bill about the use of regulation making powers and Ministerial discretions. Similarly in relation to process and timeframes, rather than see these matters pushed back into secondary legislation, we would like to see these matters provided for in the Bill itself.

---

#### **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.

---