

Infrastructure 26, RWE Renewables

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 RWE Renewables | Evidence from RWE Renewables

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?

As Wales' largest power producer and generator of renewable energy, RWE plays a critical role in driving Wales' decarbonisation, working with Welsh Government and wider partner organisations. Through our past and future investments RWE is helping to create a clean, affordable and secure power system, which can act as the springboard to the decarbonisation of wider economic sectors across Wales, such as industry and transport.

We are currently involved in over 3 gigawatts (GW) of power generation in Wales across 12 sites, of which around 1GW is renewable. Our existing renewable energy portfolio already generates one third of Wales' renewable energy production - enough to power 550,000 homes - whilst our 2.2GW Pembroke Gas Power station, which has exciting plans for decarbonisation as part of the Pembroke Net Zero Centre, powers an additional 3.5 million homes.

Over the last decade, RWE and partners have invested over £3 billion to deliver energy projects in Wales. Our major investments include Pembroke Power Station, the Gwynt y Môr Offshore Wind Farm, and around £250m building onshore wind projects at Brechfa Forest West, Clocaenog Forest and Mynydd y Gwair. We also have an ambitious development pipeline, including 7 onshore and 1 offshore wind projects.

RWE is broadly supportive of the general principles of the Bill and welcomes the introduction of a unified consenting process for infrastructure projects in Wales, in particular to meet the energy transition and renewable energy ambitions set out in Future Wales: The National Plan 2040 and Planning Policy Wales. RWE

endorses the principle of a new unified consenting regime for significant infrastructure projects in Wales and considers that the new regime has the potential to address many of the challenges experienced with the existing Welsh consenting regimes.

We identify in the following responses potential concerns relating to points of detail. Some of our concerns arise inevitably from the lack of detail in the Bill on certain matters, which will need to be addressed in subordinate legislation and guidance. RWE understands that Welsh Government intends to consult on the general principles of subordinate legislation after the summer recess and welcomes the opportunity to provide further comments on the detailed implementation of the Bill.

At the outset, we would wish to emphasise that in order to realise the benefits of a unified consenting process, proper consideration must be given to addressing some of the systemic challenges of existing consenting processes, including the Planning (Wales) Act 2015 developments of national significance (DNS) and Planning Act 2008 development consent order regimes. RWE's recent experience of both the DNS and DCO consenting regimes is that there is an increasing elongation of the validation, examination and determination stages, driven in part by a lack of resources and/or substantive engagement by consultees at the pre-application stage.

As the proposed significant infrastructure project (SIP) regime would represent a move towards a 'one stop shop' for development consents in Wales, it is very likely that existing problems in the consenting processes will be exacerbated as a result of the additional complexity that SIP applications would necessarily involve, unless sufficient steps are taken to address them. Therefore appropriate resourcing and strict adherence to the proposed statutory timescales are essential to improve the delivery of energy projects through the new system.

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

It is important that the new unified consenting regime is capable of incorporating new and emerging forms of energy generation and associated infrastructure, that may be less well covered under existing regimes. Likewise, clarity and the pace of consent in relation to major developments at locations such as ports for future

offshore wind deployment will be essential in helping Wales realise its future ambitions for offshore energy deployment.

RWE notes that in relation to energy SIPs, the Bill generally follows the approach taken by other consenting regimes. Whilst this approach covers existing technologies, it does not encompass the full range of energy infrastructure required to facilitate the energy transition, for example:

- hydrogen distribution pipework;
- CO₂ pipework, liquefaction facilities and jetty infrastructure for shipping;
- shared heat networks;
- water supplies for green hydrogen electrolysis etc.

In particular, there is no specific mention in the Bill of standalone hydrogen production or associated facilities. It is acknowledged that the Bill includes powers which would enable Welsh Ministers to add to or vary the list of significant infrastructure projects. A commitment from Welsh Ministers to take an active approach to the use of this power (particularly to reflect the pace of technological change) would be welcome. In addition, and perhaps more importantly, the ability of developers to apply for specific projects to be brought into the SIP regime is essential for the new consenting regime to function as a “one stop shop” where most needed. Although some of such projects may fall within the scope of Town and Country Planning permissions, where multiple consents are required, developers should be able to apply and hopefully bring them to the SIP regime.

The possibility of consenting hydrogen development as ‘associated development’ as part of a project involving a generating station is helpful to some extent, but further detail as to the types of development that may qualify as associated development will need to be set out clearly in accompanying guidance.

In relation to solar PV projects, RWE considers that the compulsory SIP threshold should be increased to 100MW. RWE’s experience of solar projects is that the capacity of a project does not necessarily correlate to its complexity. Moreover, in England there are few solar projects which come forward between 50 – 100MW. This is in large a measure attributable to the NSIP consenting threshold for solar projects being set in RWE’s view at too low a level (50MW), as projects of that scale are unlikely in all cases to be of such significance and complexity as to merit the additional costs and resource implications of seeking consent through that more rigorous consenting regime.

Amending the Bill to increase the threshold for solar PV projects would therefore

facilitate the best use of available grid capacity being made. To reflect an increase in the 'compulsory SIP' threshold for solar projects, the 'optional SIP' threshold for this type of project should also be increased to enable solar projects between 10-99.9MW to opt-in to the SIP regime, where an applicant considers that this is appropriate having regard to the individual circumstances of a project.

Additionally, the capacity thresholds for solar should be expressed in terms of alternating current (AC), as has been clarified in the updated draft Energy National Policy Statements under the Planning Act 2008 regime.

Part 2 - Requirement for infrastructure consent

RWE is supportive of the principle that the SIP regime should be open to other projects which do not meet the criteria set out in the Bill for qualification as 'compulsory SIPs,' as was originally proposed in the 2018 consultation 'Changes to the consenting of infrastructure: Towards establishing a bespoke infrastructure consenting process in Wales'.

Although the consultation materials which accompany the Bill refer to the category of 'optional SIPs', the Bill provides that the ability for projects which do not qualify as 'compulsory SIPs' to access the SIP regime is ultimately at the discretion of Welsh Ministers via the issuing of a direction under clause 22, akin to the section 35 direction power under the Planning Act 2008. Under the Bill as introduced, applicants do not therefore have the automatic right to opt-in to the SIP regime for projects falling within the criteria of 'optional SIPs'.

RWE supports the removal of the need for a direction from the Bill and instead projects which fall within the criteria set out in guidance should have the ability to opt-in to the SIP regime as applicants are best placed to identify which consenting route is best suited to individual projects.

It will be important that the guidance which is proposed to set out details of the optional SIP thresholds is not drafted too restrictively and is updated regularly to respond to experience of the SIP regime and changes in technology.

In the event that the clause 22 direction power is retained in the Bill, the inclusion of a statutory deadline for deciding on a request for a direction (as is in place for the equivalent section 35 direction power under the Planning Act 2008, but currently lacking from the Bill) would provide applicants with greater clarity, particularly in the case of novel and emerging technologies which are not currently covered by Part 1 of the Bill.

Part 3 - Applying for infrastructure consent

It is acknowledged that much of the detail as to the pre-application procedure will be set out in subordinate legislation.

Whilst RWE recognises that there are benefits in ‘front loading’ the consenting process, the detail of the implementing regulations (and, just as importantly, the supporting guidance) should strike an appropriate balance to ensure that applicants do not face unnecessary burdens in developing projects. For example, clear guidance on consultation standards to ensure that pre-application consultation is robust but proportionate.

The Bill provides for consultation on compulsory acquisition to be carried out post-application, which may enable a more light-touch pre-application consultation process. However, it is not yet clear how additional consultation post-validation of an application would affect the examination of applications which had been accepted, particularly given that the 52 week statutory deadline for determination runs from the validation of an application. Further detail in regulations and guidance would be helpful for applicants, particularly given the policy requirements governing compulsory purchase and the expectation for early engagement with affected parties.

Another area of concern in the Bill is the absence of a time limit within which the Welsh Ministers must decide whether or not to accept an application. This should be remedied. RWE’s current experience of the DNS process, which has a validation period of 6 weeks in the case of EIA development (itself 2 weeks longer than the equivalent time period for accepting applications for development consent under the Planning Act 2008, for arguably less complex projects) is that Planning and Environment Decisions Wales are estimating between 10-12 weeks for validation. The inclusion of a statutory time period for validation of SIP applications in the primary legislation would provide applicants with greater certainty and help to ensure that the headline 52 week determination period for SIP applications is not undermined by an unduly long or uncertain validation period.

It is helpful that the Bill requires local authorities to submit local impact reports in response to the notification that a SIP application has been accepted, which should help to identify relevant issues for the examination at an early stage.

It will be important for applicants and other users of the new regime to have the opportunity to consider the draft subordinate legislation which will set out the necessary supporting detail on the pre-application procedure, including the

content of the application documents. This will help applicants understand the extent to which the new regime is similar to or differs from existing consenting regimes.

It is helpful that the Bill envisages that regulations will include the form of a draft infrastructure consent order which could function akin to 'model provisions' used in other consenting regimes and provide useful clarity to applicants on how draft infrastructure consent orders should be prepared.

To the extent that regulations will set out prescribed documents to be included with a SIP application, those regulations should be reviewed regularly and respond to emerging practice as the regime develops and embeds.

Part 4 - Examining applications

The Bill provides for a number of different procedures for the examination of an application. It is therefore difficult for applicants to gauge upfront the likely cost and resource requirements of the new regime and to budget accordingly. As much of the detail is left to subordinate legislation, there should be clear guidance to provide applicants with greater clarity as to the factors that will influence the choice of procedure.

In order to fast track the delivery of new energy infrastructure in Wales, RWE considers that local inquiries should only be used in exceptional circumstances for the examination of energy SIP applications. RWE expects that for most projects the most appropriate form of examination will consist of a primarily written process supplemented by hearings on specific issues where required e.g. compulsory acquisition or project-specific issues.

RWE is particularly concerned by the wide powers under clause 50 for Welsh Ministers to direct further examination of an application by examining authorities. Clear parameters are needed in subordinate legislation (or guidance) to clarify the circumstances in which the power may be exercised, which in RWE's view should be in exceptional circumstances only if developer confidence in the 52 week consenting period is to be maintained. This approach would also discourage the increasing tendency by some consultees of making late submissions which could and should have been made earlier in the examination process, or earlier still during pre-application consultation where the relevant information was available to enable the consultee to engage at that stage.

Part 5 - Deciding applications for infrastructure consent

RWE welcomes the provision in the Bill for infrastructure policy statements to guide decision-making on SIP applications. The potential role of the policy statements in the SIP regime is strengthened by the clarification in clause 53 that in the event of conflict with the national development framework and marine plans, the policy statements will prevail. The introduction of infrastructure policy statements to guide the decision-making process for SIPs is also a key opportunity for Wales to influence, and lead, on the approach to onshore wind projects in the UK, in addition to other low carbon and renewable energy projects and associated developments.

RWE understands however that Welsh Government considers the relevant Bill provisions to be reactive powers and does not propose to introduce policy statements other than for novel technologies or issues.

RWE strongly encourages Welsh Government to reconsider the position and to introduce policy statement(s) covering the development of new energy infrastructure. Whilst Future Wales contains a strong degree of general support for new renewable energy development, RWE considers that the successful delivery of Wales' renewable energy targets requires the need case for additional energy infrastructure to be expressed in the clearest and strongest possible terms, with a strong starting presumption in favour of development and an acknowledgement that it will not be possible to deliver the infrastructure required without some residual adverse impacts arising. Such policy statements should also provide wide support to all types of decarbonisation including changes to existing projects converting into low carbon generation.

Similarly, it is essential that policy statements provide clear direction to decision-makers on how the national need for new energy development and local impacts should be balanced in the decision-making process. Otherwise, there will be a continued risk of uncertainty, delay and inconsistency in decision-making where projects are refused for reasons of local impact despite meeting the general national need identified in policy.

RWE welcomes the powers in the Bill that would enable examining authorities to make decisions on particular types of SIP application. Whilst further detail is awaited as to the circumstances in which applications would be decided by examining authorities, in principle it is a practical tool which should enable decisions on less complex applications to be made earlier than the 52 week decision deadline.

Whilst the overall 52 week statutory timeframe for decisions on SIP applications is strongly welcomed, the Bill does not prescribe time limits on the various stages of the process, e.g. the examination of the application by the examining authority, the time spent by the examining authority in preparing its report of findings and conclusions on the application and overall recommendation and the consideration and decision by Welsh Ministers, which could potentially vary significantly from project to project depending on the circumstances. As noted above, the robustness of the overall timescale for determining SIP applications is further complicated by the provision for post-application consultation on compulsory purchase matters. RWE would strongly encourage the inclusion of statutory periods for each stage of the examination and decision-making process to provide applicants and other parties with more certainty.

Confidence in the statutory timeframe for decisions is a very important aspect of maintaining developer and investor confidence in the planning system and for securing crucial inward investment in renewable energy development. Statutory deadlines also help to focus participation in examination by local authorities, consultees and other affected parties.

Clear guidance on the scope of associated development will be needed to give applicants clarity on the scope of development that may be included in a SIP application.

Part 6 - Infrastructure consent orders

Infrastructure consent orders should be flexible instruments which provide applicants with sufficient scope post-consent to make changes to projects to respond to information available following site investigations and the input of contractors who may identify opportunities for environmental improvements in the final detailed design.

The ability to include other consents in an infrastructure consent order (whether 'deeming' the other consent to have been given or disapplying the need for it) is a welcome tool for developers and will help the development of the new SIP regime as a 'one stop shop' for development consents for significant projects in Wales.

However, the extent to which the Bill will deliver a true 'one stop shop' is likely to be limited as under the Bill as drafted consenting bodies can simply block the inclusion of other consents in an infrastructure consent order. It is noted that regulations made under the Bill can override the need for consent from other

consenting bodies in specified cases. RWE would therefore support regulations under the Bill conferring extensive exceptions to the need for the consent of other bodies to be obtained in order for those other consents to be included in an infrastructure consent order. The examination process will provide an adequate opportunity for the views of other consenting bodies to be raised and taken into account by the examining authority in making a recommendation on whether a proposed deemed consent or disapplication is appropriate in the particular circumstances of the case.

There should be greater scope to authorise the compulsory acquisition of special category land where it can be demonstrated that the benefits of the development (particularly in the case of low carbon and renewable energy development which contributes to wider Net Zero targets) outweigh the harm that the loss of the land would give rise to.

Whilst it is appropriate that special category land receives protection and applicants will try to avoid the loss of such land, the possibility of special Senedd procedure applying to the compulsory acquisition of special category land in certain circumstances should be removed from the Bill. This process would duplicate the consideration and scrutiny that the SIP application will already have been the subject of as part of the examination process and is not consistent with the urgency in the scaling-up of low carbon and renewable energy infrastructure that will be required to meet Wales' decarbonisation objectives.

In relation to Crown land, the need to obtain the consent of the appropriate Crown authority should be limited to compulsory acquisition powers only, and not for other provisions in an order which relate to Crown land. RWE's experience under other consenting regimes is that some Crown bodies require applicants to explain and justify the potential application of individual provisions of an order to each parcel of Crown land within the boundary of a project, which adds unnecessary time and cost to the process.

Whilst the power to make regulations dealing with the correction of errors is welcomed, and it is to be hoped that the powers would only need to be used sparingly, RWE's experience of the Planning Act 2008 regime is that a 'final' as made development consent order will often contain minor errors and inconsistencies which require correction. Under the Bill, the need for an applicant to request the correction of errors (where the errors are contained in an infrastructure consent order) gives rise to additional delay. In this regard, a practice that would assist in minimising the need for a correction order (and

which is followed in other consenting regimes) would be for the Welsh Ministers to circulate to the applicant, on a without prejudice basis, the final version of an infrastructure consent order which it is proposed to be made in order for the applicant to comment on any minor drafting points.

Part 7 - Enforcement

No response.

Part 8 - Supplementary functions

RWE welcomes the inclusion of a statutory duty on consultees to respond to consultation by the Welsh Ministers or examining authority and for Welsh Ministers to give directions to public authorities requiring them to take particular steps in relation to an application. It will be important for the statutory powers to be reflected in resourcing allocations and funding settlements to ensure that consultees can play a role in delivering the Climate Change Minister's ambitions for the new regime:

"Having an efficient and effective consenting regime is vital to the timely delivery of important infrastructure projects in Wales that make a positive contribution towards our social, economic and environmental prosperity and net zero ambitions."

Part 9 - General provisions

RWE understands that the intention is for the new regime to be effective from mid-2025. It will be important for proposed transitional provisions to be consulted on with applicants and communicated at the earliest opportunity, particularly given that developers such as RWE will have a pipeline of pending projects at different stages of development in the existing consenting regimes.

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

The biggest barrier to successful implementation of the new regime is likely to be the resourcing and capability constraints facing consultees and other statutory bodies involved in the process. Public authorities should be adequately resourced to respond to SIP applications and engage at an early stage with applicants on proposals.

As an example, RWE has an onshore wind pipeline in the order of 600MW across 7 projects with a target to add ~50MW per annum. This is likely to equate to 1-2 SIP applications per annum. In addition, the majority of these projects will require

associated grid connections up to 132kV, and some of these connections will themselves qualify as SIPs. The DNS register currently includes 26 applications 'in progress' and 40 projects at the 'pre-application' stage., of which a good number would qualify as compulsory SIPs.

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?

The Bill is being promoted at a time when the UK government is carrying out a review of the Planning Act 2008 regime, which similarly to the Bill introduced a unified consenting process for major infrastructure projects. The UK government has recently consulted on operational reforms to that system as part of its NSIP Action Plan and there are a number of lessons which can be drawn from the operation of that regime in designing and implementing the new SIP regime.

RWE considers that it is imperative that Welsh Ministers take heed of the difficulties that have arisen in the Planning Act 2008 system when implementing the new SIP regime in Wales and in particular the need for proportionate examinations and adherence to statutory deadlines for decisions on all developments that will contribute to Wales meeting its Net Zero targets.

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?

The Regulatory Impact Assessment identifies that there will be a transition cost to developers of £3,000 for training on the new regime. In practice, developers are likely to incur significantly higher familiarisation costs for early applications under the new regime as it beds in and practice and procedure develops. The assessment therefore underreports the likely costs to applicants of familiarisation with the new regime, but this should be balanced against the wider benefits that the new regime will deliver.

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.
