

**From:** Stuart.Ingram@gov.wales <Stuart.Ingram@gov.wales>

**Sent:** Wednesday, September 20, 2023 1:10 PM

**To:** Climate Change, Environment, and Infrastructure Committee | Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith <SeneddClimate@senedd.wales>

**Subject:** Evidence Session

Hello

Many thanks for the warm welcome we received at the Senedd earlier today.

Further to the request of the Chair at the NICW Committee session, please find attached the event presentations and scribe notes from the workshops. The latter are very much in rough note form, however, should clarification be required on any of these, we can assist.

Also, for completeness, I paste below a list of the organisations that were represented 'in the room' at the event.

If you have any questions, or require anything further, please let me know.

Best wishes and thanks again.

Stuart

Allan Archer Planning  
NICW  
Highlight Planning  
Mott Macdonald  
Welsh Government  
Arup  
RTPI Cymru  
WLGA  
Lichfields  
Design Commission for Wales  
Planning Aid Wales  
Wardell Armstrong  
Carney Sweeney  
Future Generations Wales  
WSP  
Atkins  
TFW  
NRW  
Savills  
National Grid  
Vale of Glamorgan Council  
PEDW  
BT  
Burgess Salmon  
WW Utilities

**Stuart Ingram MRTPI**

Head of National Infrastructure Commission for Wales Secretariat / Pennaeth  
Ysgrifenyddiaeth Comisiwn Seilwaith Cenedlaethol i Gymru  
Planning Division / Adran Cynllunio  
Climate Change and Rural Affairs Group/ Y Grŵp Newid Hinsawdd a Materion  
Gwledig Welsh Government / Llywodraeth Cymru

## NICW / RTPi CYMRU - NOTES SHARING DOCUMENT

### INITIAL DISCUSSION NOTES

#### Welsh Government Presentation

- Clarification on 'no procedure' statements on Senedd process
- Mandatory threshold of applications LPA / WG process. Type of development (EG several consents needed). Regulations to set out type of projects which WG will direct will to be determined by Welsh Ministers.

#### PEDW Presentation

- Supporting RIA. Workload of PEDW. Existing DNS wouldn't be SIPS. How does PEDW ensure its resourced. Pipeline of projects will be based on industry trends. Resourcing this is a challenge to predict. Perhaps less applications, but bigger one. Detail will be in the regulations over what developments are caught. Changes in technology will also assist in this.
- Talking to PINS (England) about resourcing etc. Yes, talking to colleagues about this. Interested in resourcing this and how they balance this challenge.

#### Legal Response

- Engagement from communities. They usually engage when asked. Statutory consultees vary in their responses. Developers do not want to be shocked by a response which raises new issues later in the process. Resource is needed to enable this to happen. Developers are engaging. They all have comms teams and try to engage. Consultation does not mean making everyone happy. If they aren't happy, they still need to be asked what they want if it is consented.
- 

### DEFINITION OF DEVELOPMENT

#### Pipelines

Not dealt with as we don't have legislative competence over all aspects. The Wales Act gave strange limits on the devolution settlement.

Power is with Westminster (pipelines act) which means that certain types of development do not fall under this Act.

Cross-border issues.

Should pipelines be included? Would like it to be included, would make things easier. In England it's a DCO, in Wales it's an application to the LPA.

Hybrid schemes?

Energy parks – solar, wind, battery storage. Battery is out of the planning act. If you had solar and wind as part of the proposal, would that take you over the threshold? Bill allows for associated development to be included. If nothing is individually included in the bill, it would be a directed application.

Worth remembering that all these pieces of infrastructure have existing consenting regimes.

From rail perspective had quite a good robust definition, a lot of work is done under Part 11. Railway would still look to implement as part of existing Part 11.

What do we think is missing?

Thresholds – what happens to less than 50mw schemes? Welsh ministers need to direct. Because under 50, will go straight back to LPA, but then potentially appealed under section 78 if refused by LPA

Why was 50mw made? Seems high. Suspect comes copied from the DCO thresholds. When legislation first came forward, 50mw was big, it no longer is as technology has moved on.

Vast majority of DNSs are coming in under 50w.

Do we think the threshold should be lower so more is captured? 25mw? Would RE developers rather the threshold came down?

DNS came in to take decision off LPA, this new legislation will mean they will go back to the LPA to determine,.

Schemes are coming forward at 49,9mw and a lot of in close proximity to each other.

Potable water isn't included?

Hydrogen is completely out because its all pipeline based?

Would be useful to provide a document (when bill becomes an Act) which explains why certain aspects haven't been included ie competence, existing legislation etc.

Grid issue

There is provision in the bill

Practically, if you have one system in Wales (infrastructure act) and another in England, how would this work in a cross border issue? Perhaps anything crossing the border wouldn't come forward because the two regimes are so different.

There is no way to bring the two systems together so the proposal can revert back to the electricity act, etc.

Section 24 in the bill says “this is not us”. Can only legislate what is in Wales and what is under Wales’ competency.

Policy context

Not for this process

Opinion is policy wording is not strong enough. There is scope to review FW every 5 years so can strengthen as needs be and both Act and FW can align as FW will be reviewed 2025? And bill comes into force 2025.

Policy statements

these are for “novel and new”.

Do LPAs want 10-50mw? Depends who you are talking to – officers or politicians

## SCOPE OF CONSENTS and NATURE OF APPLICATIONS

- Table questioned what scope is?
- Telecoms aren't mentioned in the Bill. Is this a missed opportunity? Want to work in tandem with other provisions - connectivity of important infrastructure. Resourcing is an issue in this sector as well as planning. Development and technology, such as bigger poles are being replaced by mono-poles, so future development needs to be taken into account.
- Found it difficult to talk about the detail while we are still trying to work out the structure.
- Need more certainty around optional thresholds. In particular it needs more certainty on what will be coming through to LPAs.
- It was felt that PEDW should deal with strategically important developments and LPAs should deal with those that are more appropriate to them. **So** important that the right development goes to the right place for decision. It was also felt important that this decision should be made at an early stage. Should this be decided on a case by case by case basis? There is a need for clarity around this - different levels of scrutiny. Important need for clarity in the process here. The developer needs to know what is the best route for their development.
- Pre-app is critical. Pre-app might influence the developer in making a decision on the application route - SIP or not.
- National grid - lines that are under 2km, where do they go?
- We also need to think about the consumption side of things, as well as demand and plan for this. Do we need to expand the PD rights for stat undertakers to cover this?
- What needs to be covered: Hydrogen, pipelines etc. Needs this certainty up front. We know that given climate change targets and rapidly changing technology - there will be more applications, can we look at this for the next 5 - 10 years.
- There is experience to learn from England: There are ways of including other studies, by writing them into the order. Giving detail and providing confidence doesn't need to be part of the statutory process. It can run alongside, as part of the order.
- Resources and time are needed to process the detail appropriately. Operational as well as production. Need guidance up front on process.
- The relationship between licence and planning permission: Tension between the two - licensing and operations etc. Suggest possible drafting MoUs with Stat Cons.
- A one stop shop is important.
- Certainty is needed for developers, they will be concerned over the 52 weeks.
- The definition of the marine env, is currently unclear.
- Note issues around Crown Land. What are we going to do if we need to put things on Crown land?
- If the Act work well then it will be attractive to developers. However, recognise the impact - this could lead to a flood of apps.
- Neighbouring authorities - What is local?

- LIR and impact of fees.
- Expect that the application has already looked at many of the things in the LIR anyway. Let's shartpern this up and look at proportionally.
- Only 5 weeks to produce LIR. 7k is not enough for LPAs. Is there an option to pay that fee up front to the LPA? The fee can then be used internally to resource their service. Consultants, or services.
- PPAs are being given back. No resources.
- Developers are happy to pay for a good service.
- Charge max fee and spread it out where it needs to go to get a good service.
- Future gens commissioner - is there anything in the process that helps look at the cumulative impact?
- We know we need more grid capacity and renewables in the future. We know its coming.
- It will take longer if we need to go to Ministers. Frustrating for developers and would rather have the professional involved and decide.
- In England there is time build in to make changes as things evolve.
- All parties need to be committed to the process - to get certainty timescales etc. Resources!
- Policy statements are the absolute key.

## ENGAGEMENT

- Resources. If money is provided, are the people out there to get them in to help!
  - Plenty of experience to draw from local planning authorities experiences.
  - Quality of information provided influences the quality of the response.
  - Response times for statutory consultees should be in the Bill. Recognise there is a resource issue associated with this.
  - Bill should mirror the Planning Act and set timetables out.
  - Learn from the Planning Act, doesn't need to be flexible.
  - After pre-app there is minimal chance for change.
  - eg NRW requesting 3 turbines deleted after submission, despite pre app.
- 
- Differences between public engagement and consultation with statutory consultees.
  - Earlier pre-app with public needed, outside of the statutory timescales.
  - Digital-only is not good enough. Lampost notices still an early sign of 'something going on'.
  - NRW: if pre-app is given. It must be made clear how the advice has been taken into account by developer, including reasons why things haven't been taken forward. More time for reflection by developers?
  - Statements of common (and uncommon) ground are really useful as they identify issues for discussion.
  - Quite often stat consultees won't respond to developers, but they do to PEDW once submitted.
- 
- Access to developers, not their comms teams.
  - A fully formed view cannot be formed on the Bill due to lack of info at this stage. It would have been good to have more info on secondary legislation.
- 
- Tension between Bill being too restrictive vs. requiring something good to be undertaken. Qualitative not quantitative.
  - Planning Act requires a statement of community consultation which is confirmed with LPA. This isn't in the Infrastructure Bill.
- 
- Not clear on the Bill, how responses are taken into account. Is it implicit in the PEDW examination?
  - Equal weight to overriding considerations eg climate change etc. to balance against objections. Sometimes this is overlooked.
  - Report should be required outlining how developers have taken into account. This is in the Planning Act but not the Infrastructure Act. Guidance will follow.
  - Clarity of access to information and ease of use to use the system to the public. Current arrangements are insufficient.
  - Public access to official websites is daunting.

- Big issues is that the majority of the public are completely unaware of the processes. People are generally suspicious of the process. Wider education and awareness raising is needed.
- Undergrounding isn't necessarily the answer...environmental impacts could be just as significant.



## **POLICY IN THE DECISION MAKING PROCESS**

Act trumps FW and Marine Plan – isn't that an issue?

FW, policy statements, Marine plan have equal status.

Policy statements will no longer be as they are drafted, so FW, PPW etc will remain the foremost policy documents.

Risk there will be lots of gaps – the policy doesn't entirely speak to the type of development – ie technology moves on.

Does FW need to be more granular? The pre-assessed areas are useful, but NRW may argue against these.

Industry would like more certainty, don't like that policy changes regularly can "scupper" proposals. National policy statements are preferable.

Policy statements – idea was they would be filling gaps where FW didn't cover. Effectively these would undermine FW.

There is always a balancing act, site constraints, material considerations, etc so policy will always need to be reviewed.

Pre-assessed areas – these look from a landscape perspective, but you'll have overlays with habitats, birds, etc therefore policy needs to be stronger.

- these are just high level areas where wind may be preferable, it isn't a granting or permission or refusal.

NPS give a primacy in England.

You cannot be that prescriptive at national level in terms of policy, you give so much certainty you end up with nothing granted.

Some opinions that there is already too much policy, others want stronger policy, more certainty.

Bute energy

How would this legislation help? Project spans number of LPAs, CPO powers,

LDPs and SDPs and their role.

If you're talking nationally significant projects, perhaps they should be over the head of the SDP/LDP.

if the thresholds are going up, perhaps you may see more decisions being made at a local level.

If you're looking for more spatial/ policy certainty, don't you get that at a local level?

There shouldn't be a contradiction because you have FW > SDP > LDP all of which should be in conformity.

## FEES, COSTS & SECONDARY LEGISLATION

- A lot of detail still to come.
- This is an issue for timescales.
- The success of the DNS regime, was because the timescale were on the face of the DNS bill.
- Part of the way through the process can you slip back into TCPA if it is possible? It would be useful to know what the plan for this is?
- The 10 to 50 megawatt process, you need the transitional process in place. There might be developers waiting.
- National Grid - Current pressure on connections and those that are ready to connect.
- Secondary legislation - easier to amend than primary, however problems in keeping amending secondary legislative.
- Potentially there is such a lot of info in the Policy Statements. Second guessing at the moment.
- Really important to consult on the detail of the secondary legislation.
- FEES and COSTS - developers don't mind paying for the right level of service.
- LPAs need resourcing
- Is it skills and capacity?
- We have to plan now for the future. Apprenticeships etc. - it all takes time in building up this skills.
- Developers need to know that Wales are open for business. You will then attract planners, development. etc.
- Central pool of expertise, similar to M&W: Table felt that this could work but not in all cases. A shared pool needs to be resourced - it wont work otherwise.
- Lost a lot of skill through people retiring. This needs a long term thinking.
- Is there enough development pipeline to plan all this? LPAs might only ever deal with one or two wind farms ever, so a shared pool might work in these cases.
- Resourcing and pooling - Wales is fishing for the same pool already.
- Noted 7,750k if its done within 5 weeks - NOT enough.
- The fixed fee doesn't work.
- This is not helpful for LPA, if you divide it fairly then everyone might engage better.
- If things go to S78 - LPA would have an application fee but PEDW would have nothing. Either from developers or Welsh Government.
- Need to talk to all parties to understanding coasts, time, the choices that developers would be likely to make. It will cost a lot to defend a decision.
- In scot wind farm applications get dealt with by written reps. It doesn't happen here. We could streamline this process. Needs more scoping, common sense.
- Fees and service improvement must go hand in hand. Most would be happy with a fee increase. Need certainty of time and service.

## ENFORCEMENT

- Note the interface between LPAs and WM. note you can't positively enforce.

## MOPPING UP TABLE

- Scope of the consent. Clarity on what is included.
- Principles need to be decided and established through strong national policy statements.
- Quality of submissions is a collaboration issue. It isn't just the developers responsibility to do this. This includes statutory consultees and the public etc.
- Issues raised after submission (eg peat) throw timetables and processes out of line.
- However, changes to policy do occur and need to be considered.
- Is there a risk of stakeholder fatigue? Communities are engaging in different processes. This causes confusion. Aim of the Bill is to streamline the process and focus the conversation. This is not just planning; public life etc.
- UK Government have to give consent for Infrastructure Bill to make requirements of organisations not within the control / remit of WG. eg HSE
- Transitional arrangements. Risk of differing consenting regimes for extant consents. These need further consideration on the face of the bill.
- Cross border projects. Clarity is required on the process. Two systems running to 2 different timetables. Infrastructure Bill needs to mirror arrangements UK Govt has with Scotland. Comes down to legislative competence. Needs collaboration between Governments.
- Commercial sensitivity. Design review. DCFW is a non-statutory consultee. Offers services.
- NPS under planning act requires a design review.
- No recognition of landscape in the Bill.
- Design review could help improve the quality of the applications and protect commercial sensitivity.
- Need is established in policy statements, but the resource is not there to provide the support.
- All sectors struggling with skills, retention, supply base and workforce to meet the challenge.
- Impacts on other sectors eg, historic environment, waste etc. Are these being scrutinised as much.
- If consents aren't included, is there a risk that development could be frustrated by objections further down the line. All process is subject to co-ordinated action.



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Cenedlaethol **Cymru**  
National **Infrastructure**  
Commission **Wales**



**RTPI Cymru**  
Royal Town Planning Institute  
Sefydliad Cynllunio Trefol Brenhinol

**Infrastructure (Wales) Bill Event**  
**18<sup>th</sup> September 2023**



Comisiwn **Seilwaith**  
Cenedlaethol **Cymru**  
National **Infrastructure**  
Commission **Wales**



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# Overview of the Bill

Owen Struthers

Head of National Consenting

Welsh Government

# Infrastructure (Wales) Bill 2023

NICW/RTPI  
Briefing

# Content

- Background to the bill
- Engagement prior to introduction
- Aims and objectives
- Summary of bill provisions



# Background

- The Wales Act 2017 devolved further legislative and executive responsibility for the consenting of energy generating projects, overhead electric lines as well as ports and harbours.
- As a consequence of the way these powers were devolved, Wales has been placed into consenting processes which are not fit for purpose.
- This has caused problems for developers, namely, there is no longer any certainty in terms of timing and policy, and the consenting process no longer provides authorisation for a range of other consents as part of a 'one-stop shop'.
- This situation significantly frustrates the Welsh Government's ambitions in relation to Net Zero and growing the green economy.
- This Bill establishes a unified consenting process for devolved major energy and infrastructure projects in Wales, which applies both on and offshore (up to territorial seawater boundary).

# Consultation and engagement outcomes

Support/agreement with:

- The proposals which underpin a unified consenting regime.
- The inclusion of ancillary development to avoid the need of multiple consents.
- The inclusion of compulsory acquisition powers.
- Developments designated as nationally significant to remain determined at the national level.
- The variation in type of consent dependent of the type of application made.
- The proposed new process will bring about a fairer and more equitable process/system and the proposal seems reasonable and balanced, and responds to practical experience of the current regime.

# Aims and objectives of the Bill?

## **The consenting process established by the Bill will:**

- Streamline and unify the decision-making process for devolved infrastructure projects by adopting a 'one-stop shop' approach whereby many existing consents, authorisations and licences are integrated into the process;
- Provide a transparent, consistent and simple, yet rigorous, process which enables local communities to better understand how decisions affect them;
- Meet future challenges by being sufficiently flexible to capture the consenting arrangements for developing technologies and any further powers which may be devolved; and
- Provide certainty in time-scales and in decision-making that is underpinned by a clear policy.

Imposition of limitations and conditions for rights over common and waste lands

Planning permission

Harbour Revision or Empowerment Order

Safety zone designation

Listed Building Consent

Control of deposit of building materials

Consent for works or to deregister common land

Authorisation of drainage works

Marine licence

Felling licence

Authorisation for persistent organic pollutants

Consent for work on polluted construction sites

Compulsory purchase and acquisition

Consent to carry out coast protection works

Order requiring diversion of navigable watercourses

Necessary wayleaves

Installation permit (Environmental Permitting)

Protection of habitats licence

Direction requiring highway to become trunk road

Scheduled Ancient Monument Consent

Power to interfere with rights of navigation

Registration for disposal of polychlorinated biphenyls and other dangerous substances

Compulsory water orders

Exemption under the Clean Air Act

Consent to construct and operate generating station

Waste permit

Extinguishment of rights held over land

Stopping up order

Extinguishment of rights of way

Order providing construction of bridges over navigable waters

# A single unified infrastructure consent

# Summary of Bill Provisions

The Bill contains 144 sections arranged in 9 Parts, and 3 Schedules.

## **Part 1 – Significant Infrastructure Projects**

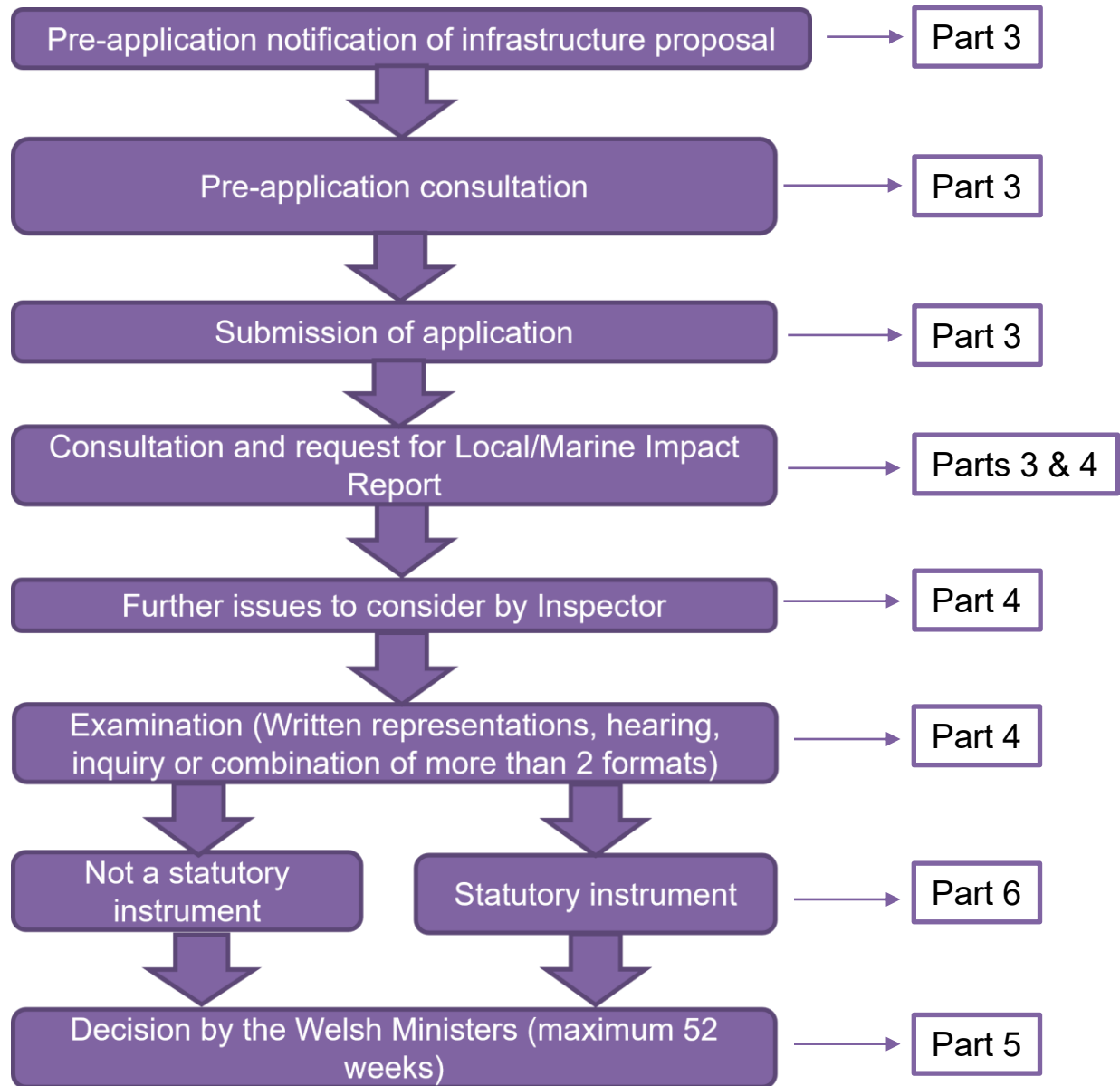
Part 1 of the Bill defines the meaning of Significant Infrastructure Projects and the qualifying projects which will be subject to this consenting process.

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

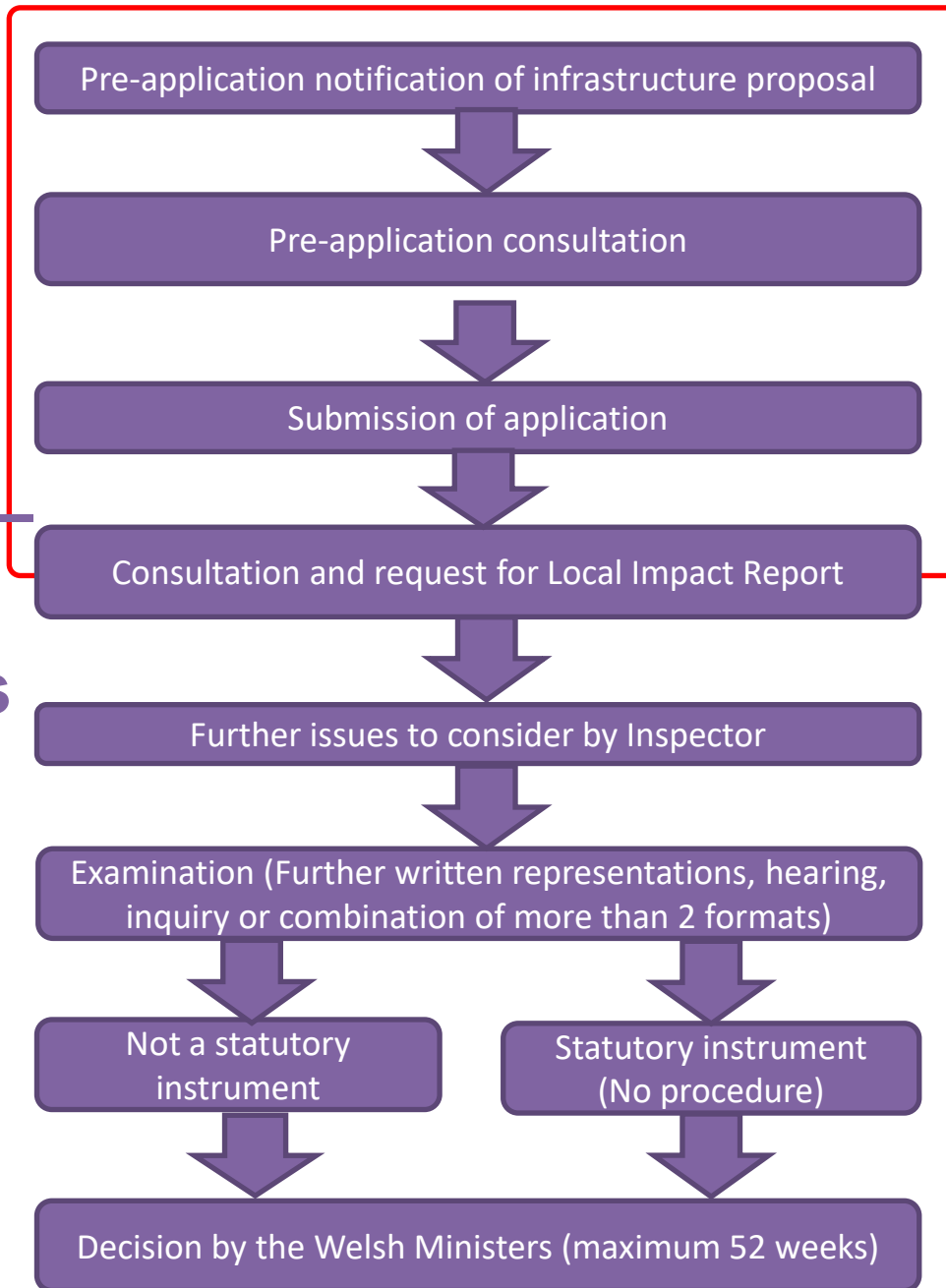
Part 2 of the Bill imposes a requirement for infrastructure consent for development which is or forms part of a significant infrastructure project, and the effect on other statutory regimes.

# What infrastructure projects are captured?

Project type	Compulsory threshold
Energy (on and offshore)	50MW+ (Onshore wind) 50MW – 350MW (All other projects)
Overhead electric lines	132KV and a minimum length of 2KM
Highways promoted by Welsh Government	Continuous length of more than 1KM
Ports and harbours	Annual capacity of handling above: <ul style="list-style-type: none"> <li>- 50,000 twenty-foot equivalent unit container ships,</li> <li>- 25,000 roll-on roll-off ships, or</li> <li>- 500,000 tonne cargo ships</li> </ul>
Radioactive waste geological disposal	All works, including investigation and preparation
Open cast coal, underground coal gasification and unconventional oil and gas	All exploitation works
Liquefied natural gas facilities and gas reception facilities	Storage capacity above 43 million cu.m per day, or flow rate above 4.5 million cu.m per day
Railways	2KM+ (Continuous stretch)
Rail freight interchanges	At least 60ha when constructed and handling at least 4 goods trains per day
Airports	1m+ passengers per year; or 5,000+ cargo movements per year
Dams and reservoirs	10m+ cu.m of water
Transfer of water resources	100m+ cu.m of water per year
Waste water treatment plants	Capacity exceeding a population of 500,000
Hazardous waste facilities	100,000+ tonnes per year (Landfill or deep storage facility)  30,000+ tonnes per year (Any other case)



# Summary Bill Provisions





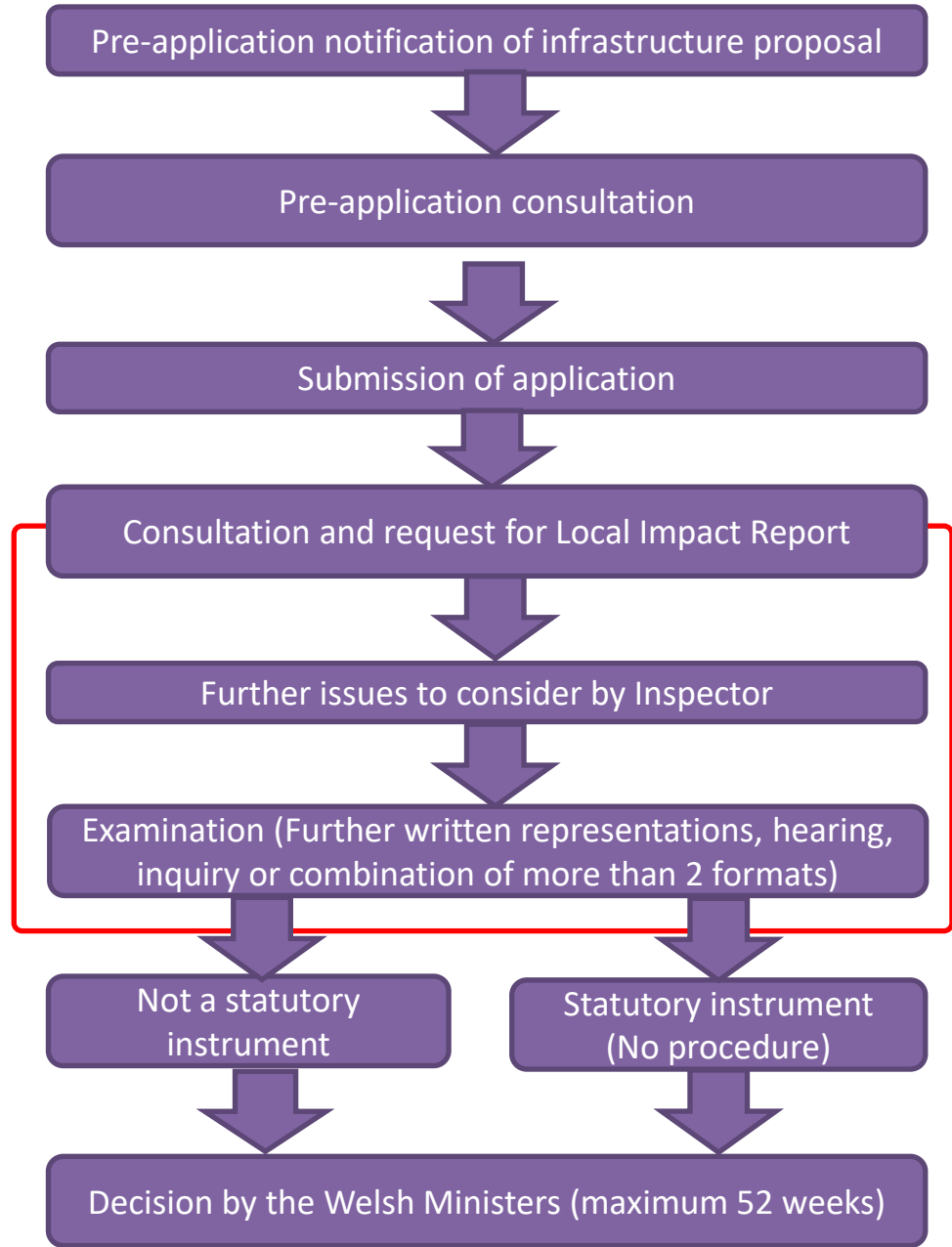
# Summary of Bill Provisions cont...

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

Part 3 of the Bill sets out:

- the pre-application procedure, including seeking pre-application advice, notification of a proposed application and the requirement for pre-application consultation;
- how an application for infrastructure consent is to be made to the Welsh Ministers; and
- the requirements for publicity and notification, which will vary depending on whether a proposed development is onshore or offshore.

This part also sets out some procedures that relate to the compulsory acquisition of land as part of an infrastructure consent.



# Summary of Bill Provisions cont...

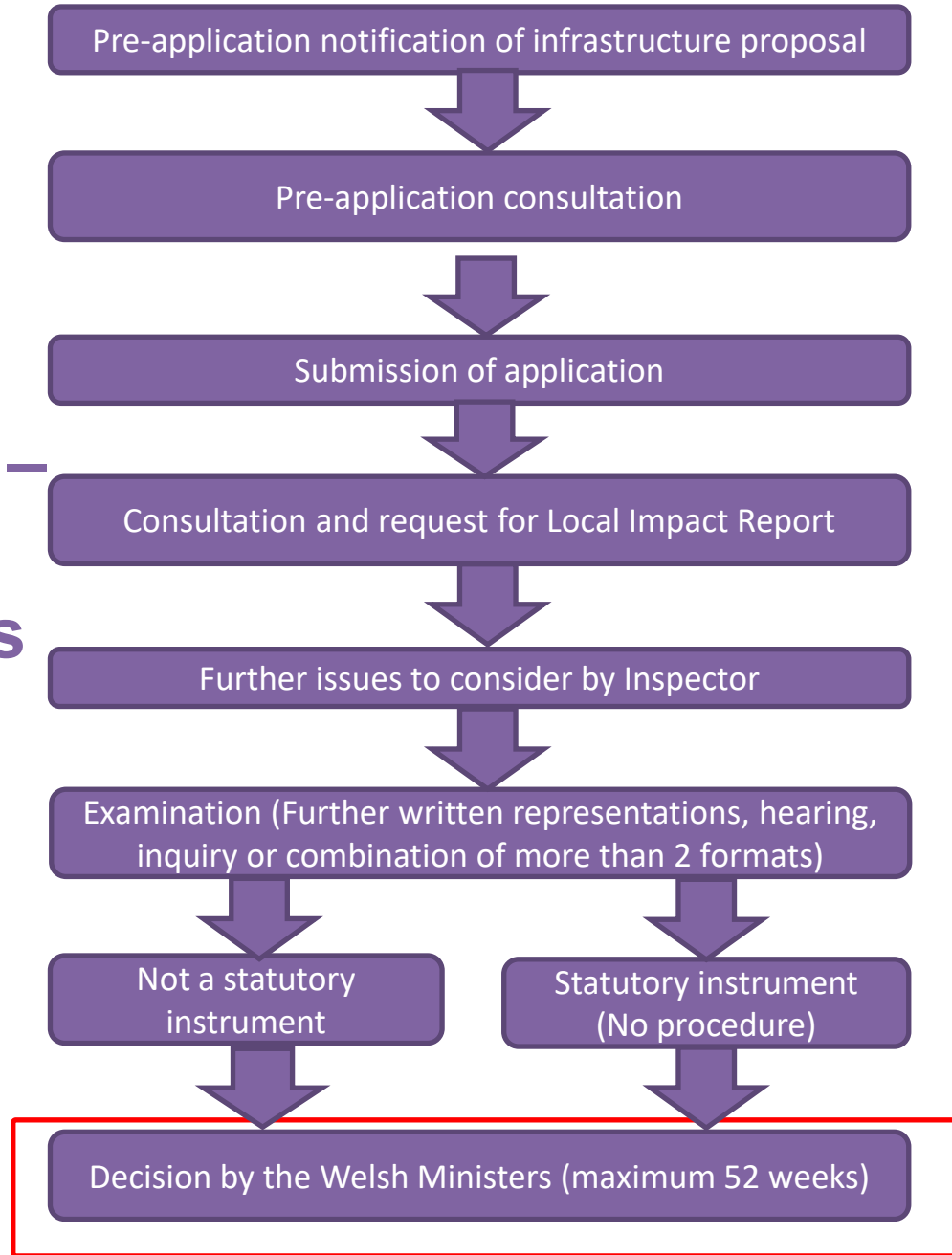
## **Part 4 – Examining applications**

Part 4 of the Bill sets out the processes and procedures for examining applications for infrastructure consent.

This includes:

- the appointment of an examining authority;
- the procedure(s) for examining applications;
- assistance during examinations; and
- reports by examining authorities.

# Summary – Bill Provisions



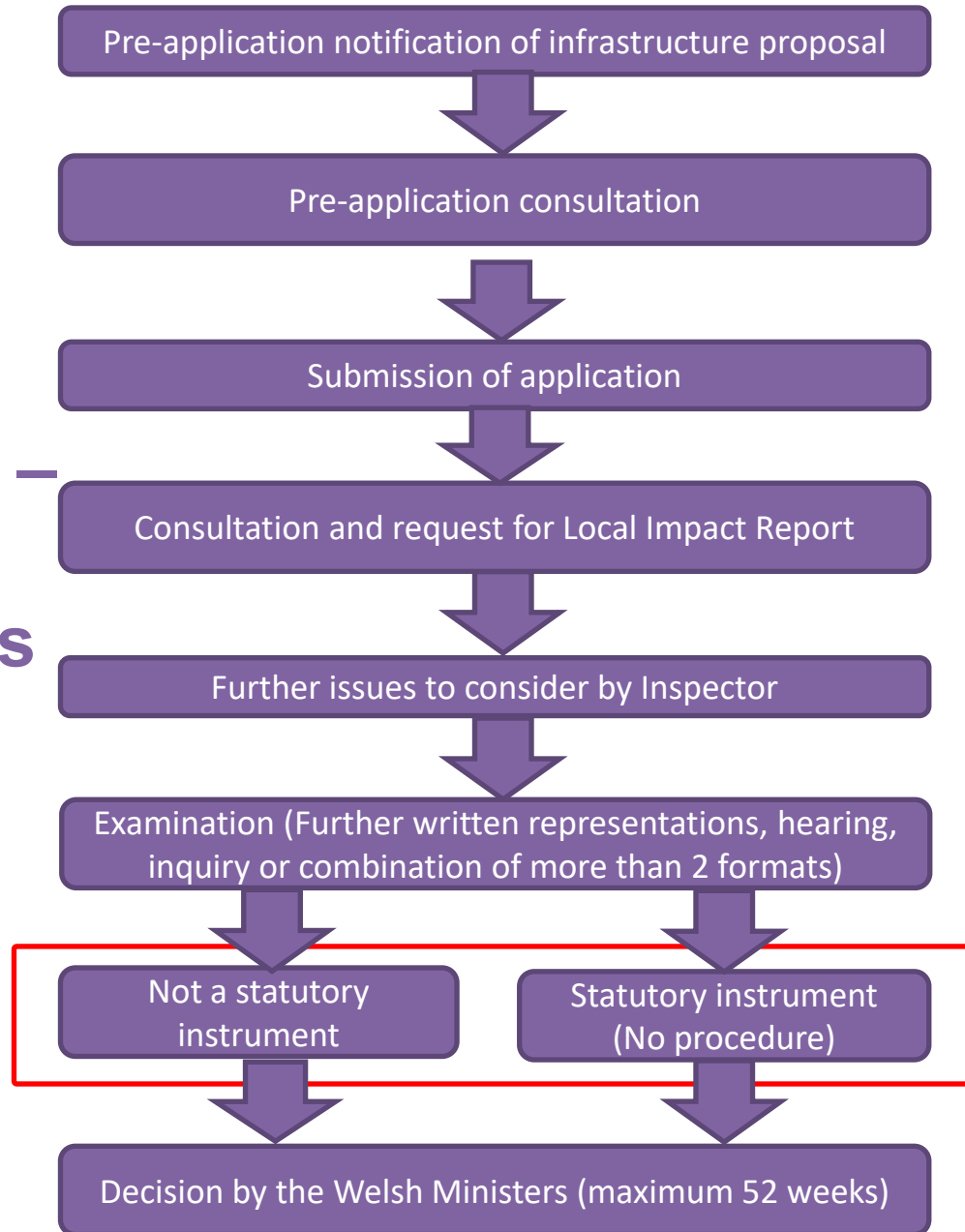
# Summary of Bill Provisions cont...

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

Part 5 of the Bill sets out:

- who decides an application for infrastructure consent;
- what has to take into account when deciding an application;
- the timetable for making the decision; and
- making the decision.

# Summary – Bill Provisions



# Summary of Bill Provisions cont...

## **Part 6 – Infrastructure Consent Orders**

Part 6 of the Bill sets out:

- What may be included in an infrastructure consent order;
- The requirement to publish infrastructure consent orders;
- How infrastructure consent orders may be amended or revoked;
- The duration of infrastructure consent orders; and
- Legal challenges.

This part also sets out some procedures that relate to the compulsory acquisition of land as part of an infrastructure consent.

# Summary of Bill Provisions cont...

## **Part 7 – Enforcement**

Part 7 of the Bill contains provisions about offences relating to development without infrastructure consent and a breach of, or failure to comply with, the terms of an infrastructure consent order and the ability to serve notices of unauthorised development.

## **Part 8 – Supplementary functions**

Part 8 of the Bill provides a number of supplementary functions, mainly for the Welsh Ministers, to facilitate the operation of the system established by the Bill.

## **Part 9 – General provisions and schedule 1, 2, and 3**

Part 9 and the Schedules of the Bill contains general provisions which relate to multiple parts or all of the Bill, including matters ancillary to development, compensation for changing or revoking infrastructure consent orders and consequential amendments and repeals.



**Thoughts and Comments?**



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Commission **Wales**



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# PEDW Perspective

Victoria Robinson

Chief Planning Inspector

Planning and Environment Decisions Wales



**PCAC  
PEDW**

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Penderfyniadau Cynllunio  
ac Amgylchedd **Cymru**  
Planning & Environment  
Decisions **Wales**

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**Presentation to Infrastructure (Wales) Bill Event:  
Observations from Planning and Environment Decisions Wales (PEDW)**

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Vicky Robinson, Chief Planning Inspector

## Introduction to PEDW

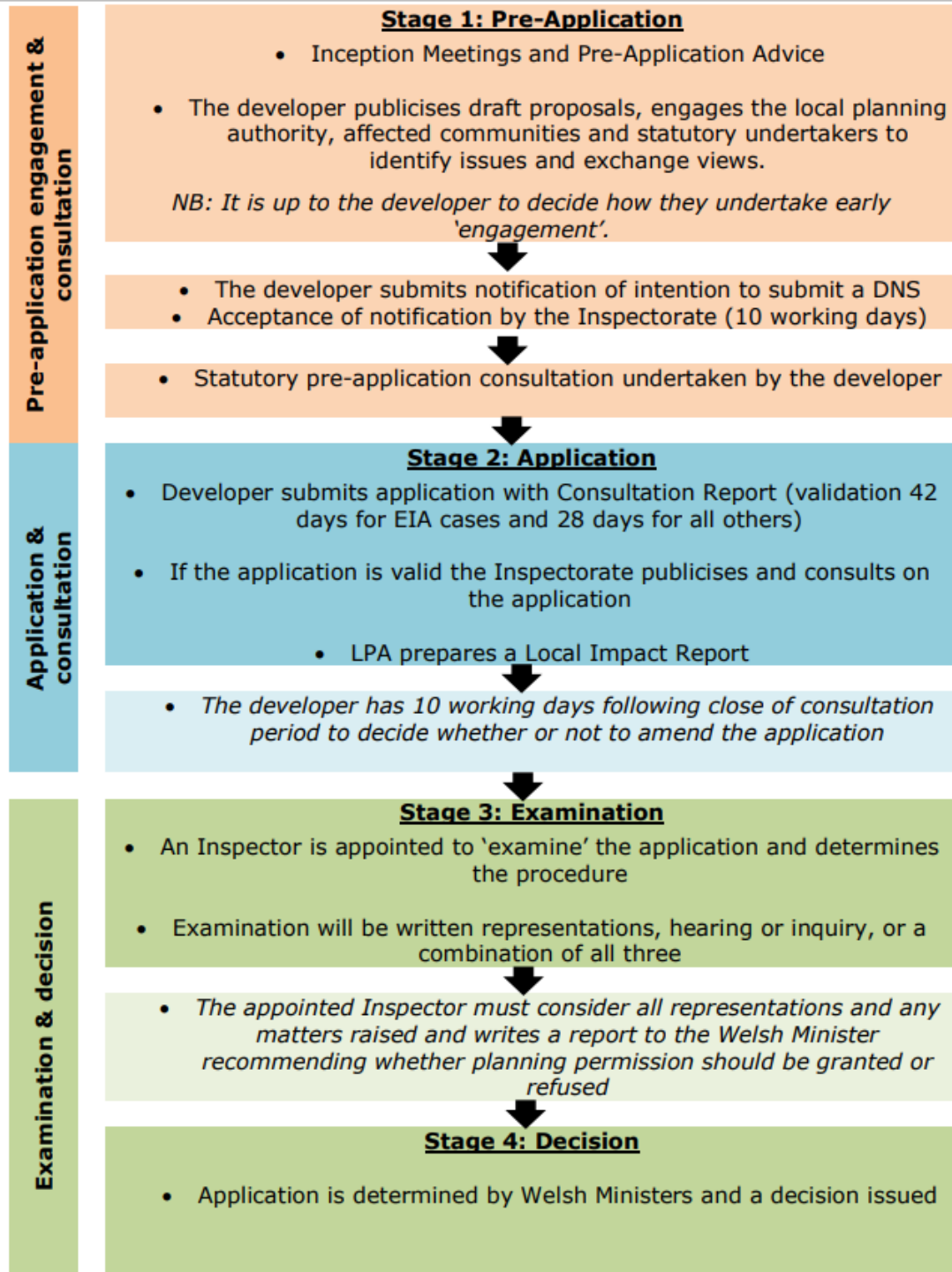
- Formerly Wales Directorate of Planning Inspectorate for England and Wales (PINS), PEDW was established on 1<sup>st</sup> October 2021
- Team of 22 Planning Inspectors and 29 support staff - home working and Pan-Wales offices
- Deal with Planning and Environmental casework in Wales on behalf of the Welsh Ministers, including:

Developments of National Significance (DNS), Harbour Revision Orders (HRO), Electricity Act, Transport and Works Act, Compulsory Purchase Orders (CPO), Environmental Permitting and Marine Licence appeals

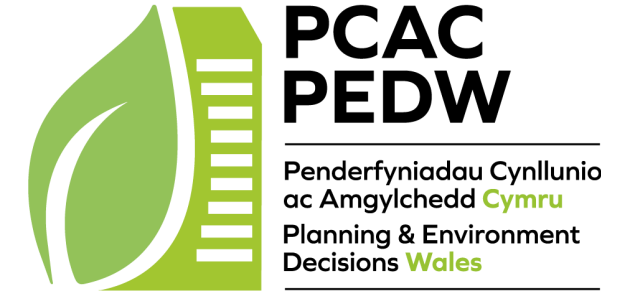
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## DNS Process Overview

- Pre application 'engagement'
- Application and Consultation
- Examination by Inspector
- Decision by Welsh Ministers

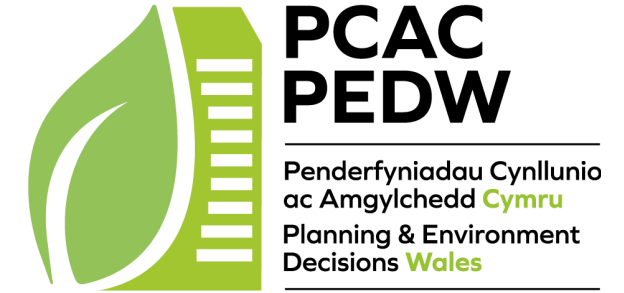


# Local Impact Reports (for DNS)



- Fee paid by applicant to LPA for LIR £7,750
  - LPA must submit an LIR within 5 weeks of notification
  - Details of the likely impact of the proposed development on the authority's area based on their local knowledge and robust evidence of local issues, and should list the impacts and their relative importance.
  - Provide factual, objective view of the impacts of the proposed development on the area in terms of their **positive, neutral** and **negative** effects
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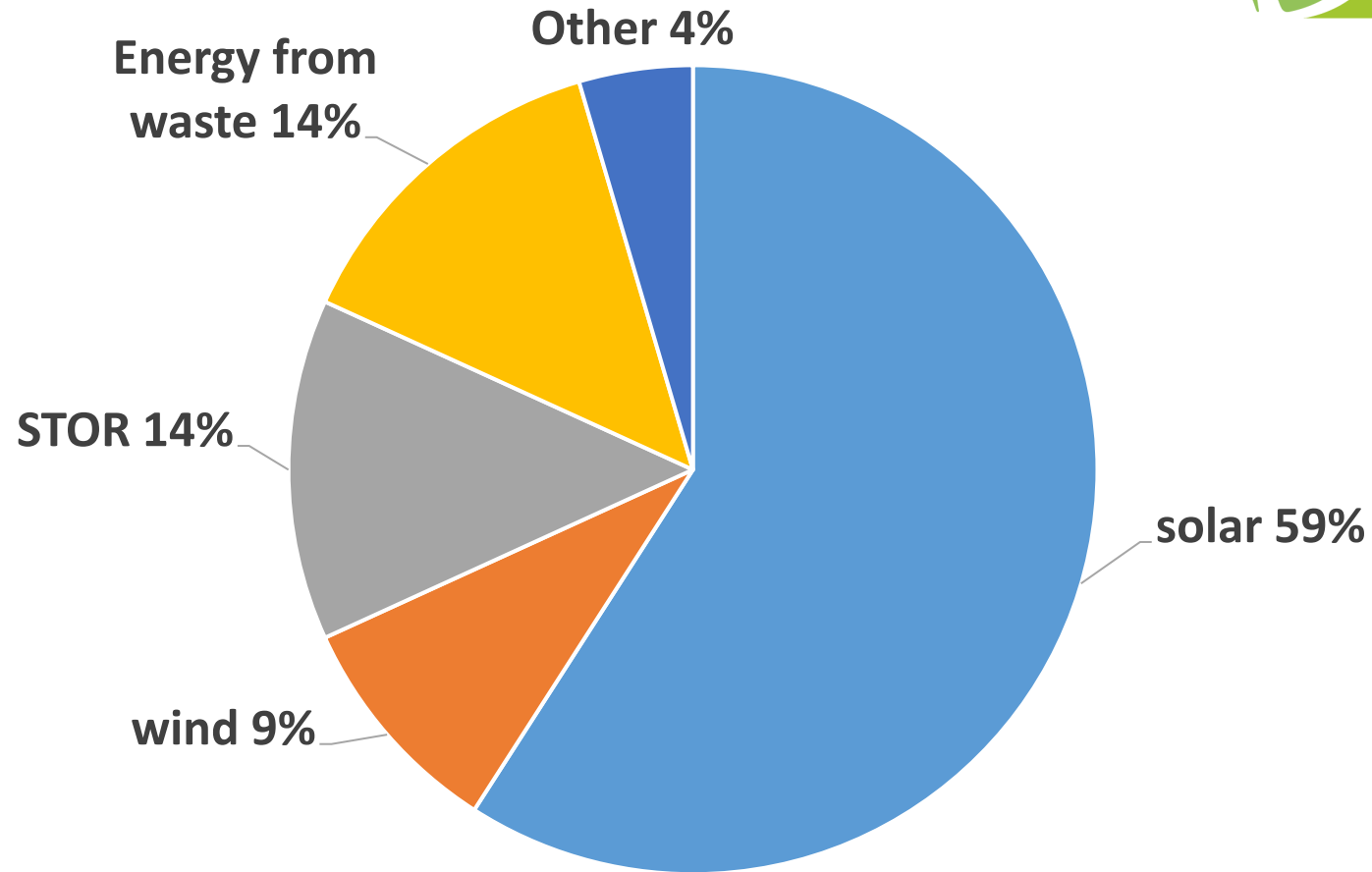
# Local Impact Reports (for DNS)



The minimum requirements for the content of a mandatory LIR is as follows:

- ✓ The likely impact of the DNS development on the area
  - ✓ Planning History
  - ✓ Local designations relevant to the site / surroundings,
  - ✓ The likely impact of any application in relation to a secondary consent being granted,
  - ✓ Any relevant local planning policies, guidance or other documents,
  - ✓ Draft conditions or obligations which the LPA considers necessary for mitigating any likely impacts of the development,
  - ✓ Evidence of the Publicity undertaken by the LPA in accordance with the Procedure Order, i.e. a copy of the Site Notice, a photograph of the Site Notice on display and a map showing the location of the Site Notice.
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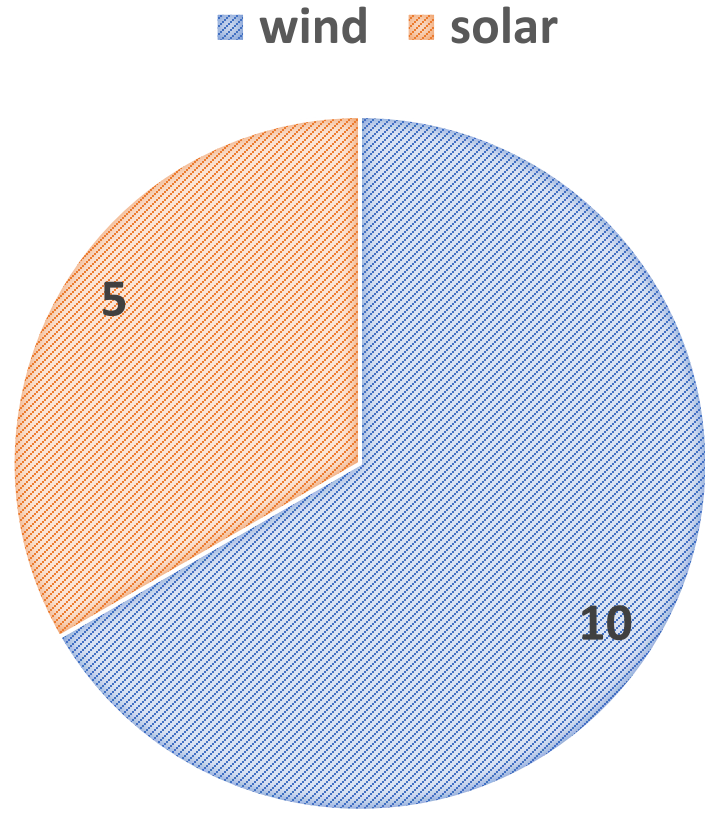
# DNS – the story so far: Decided Applications



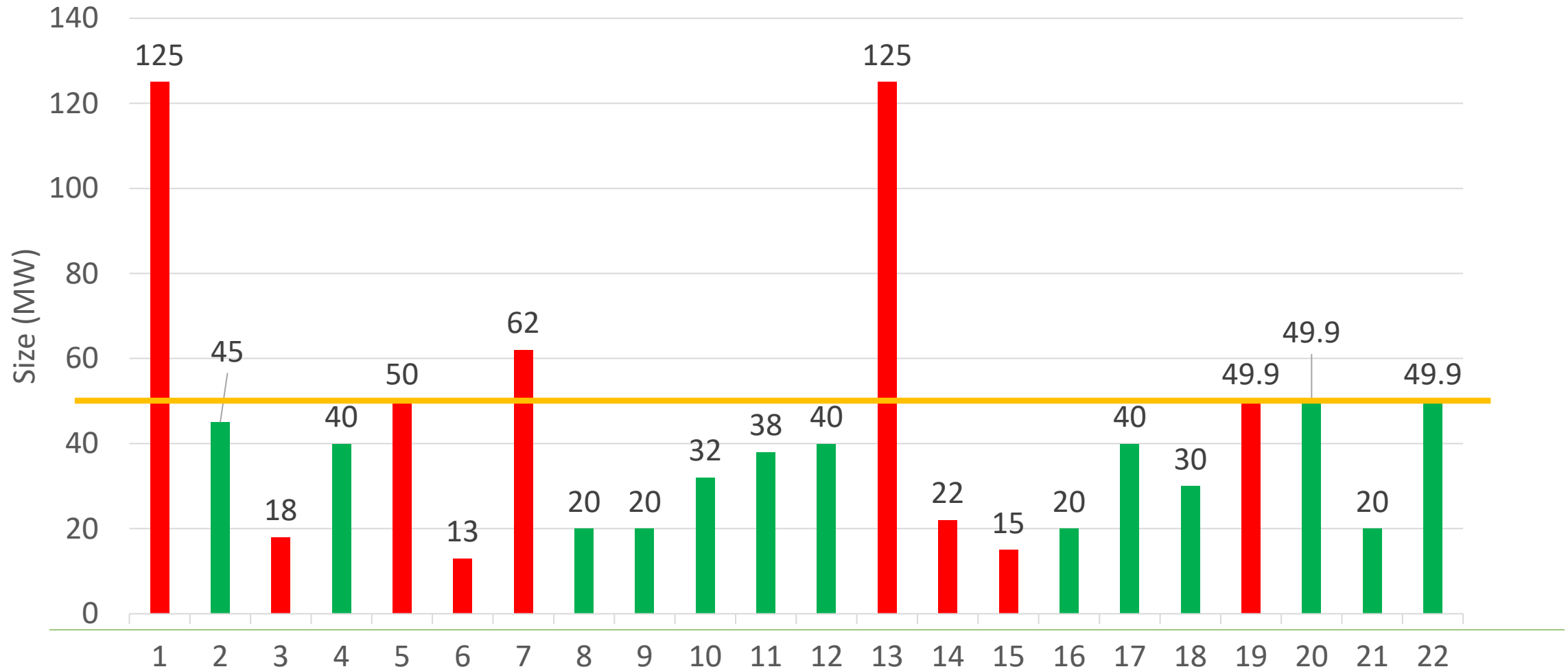
■ solar ■ wind ■ STOR ■ Energy from waste ■ Other



# DNS 'Live' Applications with PEDW (September 2023)



# DNS – the story so far: Decided Applications

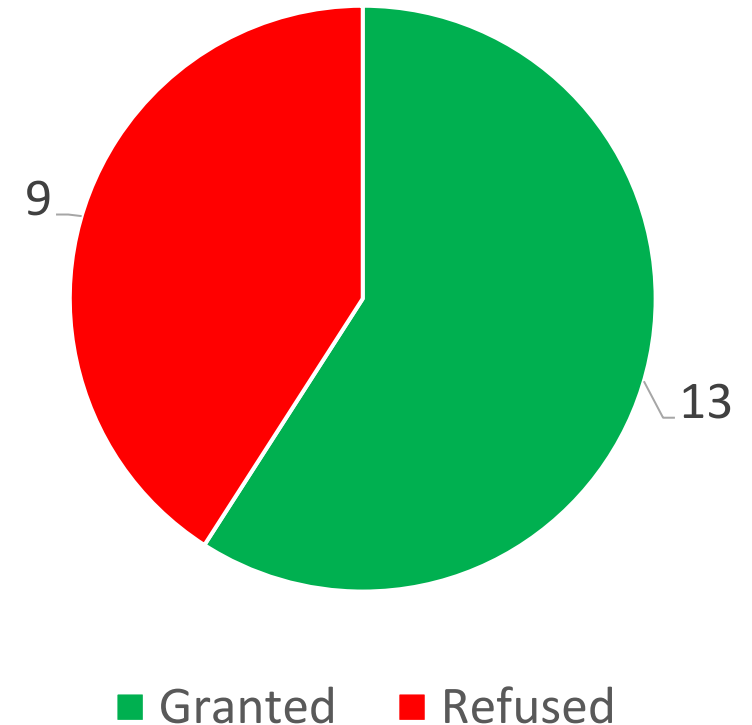


# DNS – the story so far: Decided Applications

The Welsh Ministers have determined **22 DNS:**

- 2023 (so far) - 5 (2 granted, 3 refused)
- 2022 - 5 (3 granted, 2 refused)
- 2021 - 5 (2 granted, 3 refused)
- 2020 - 2 (2 granted)
- 2019 - 1 (1 granted)
- 2018 - 3 (2 granted, 1 refused)
- 2017 - 1 (1 granted)

Minister's Decisions





## Other Infrastructure Applications



- Holyhead  
(Harbour Revision Order)
- Erebus offshore floating wind farm  
(Electricity Act)
- Morlais Tidal Energy project  
(Transport and Works Act)



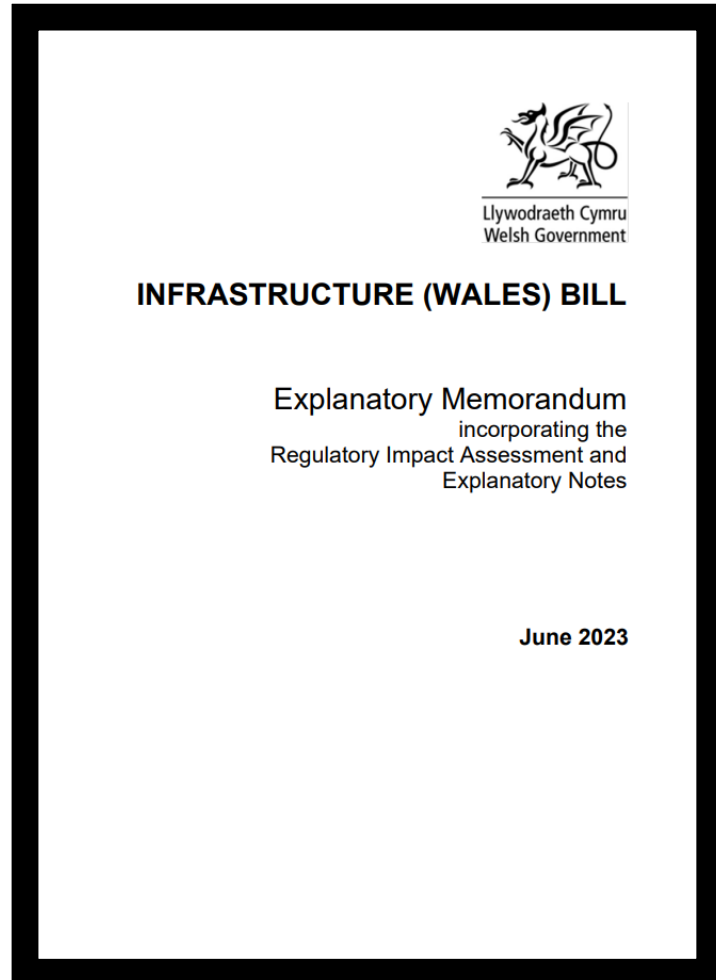
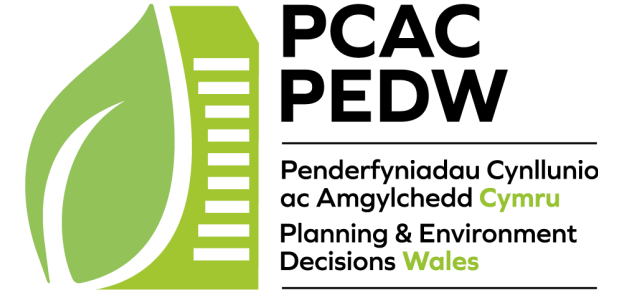
# DNS limitations

“the DNS process is limited in scope, there is limited flexibility for changes and only a small range of secondary consents can be applied for concurrently and do not form part of the main decision”

[Explanatory Memorandum]

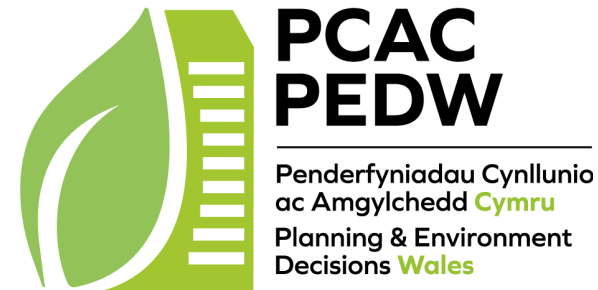
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# PEDW Observations on the Bill



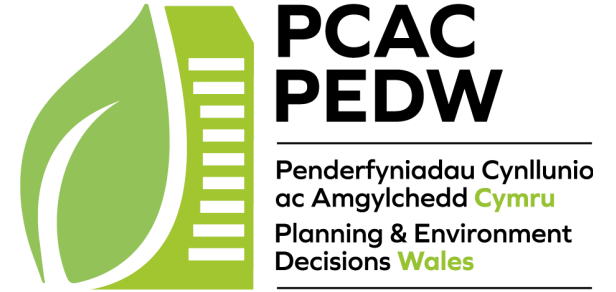
***“The timely and effective delivery of major infrastructure and low carbon development in the right locations requires simplified and efficient consenting arrangements.”***

# Introduction to the Bill



- Current legislation may need separate applications for certain permissions, consents and licences
  - new regime that adopts a 'one-stop-shop' approach where consents and other permissions can be sought in one application and decision-making process
  - aims to be more transparent and consistent allowing local communities to better understand and engage in decisions
  - vital to the timely delivery of major infrastructure in Wales
-

# What is a Significant Infrastructure Project (SIP)?

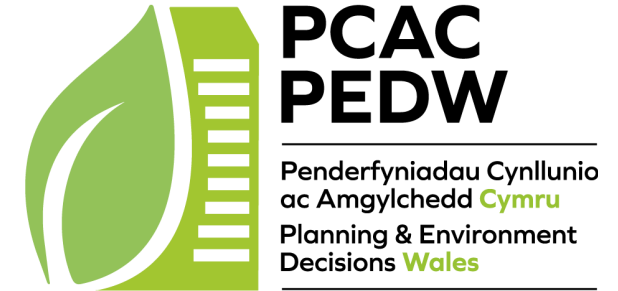


- Sections 2 – 16 set out what types of Energy, Gas, Mining, Transport, Water and Waste project are SIP
  - Thresholds to be set out in secondary legislation or is designated as nationally significant within 'Future Wales' (none in current version).
  - Tier of optional SIP thresholds and criteria would sit below compulsory ones – choice over the IC process or TCPA planning application regime. Welsh Ministers would ultimately decide whether the development constitutes a SIP requiring an IC.
  - Section 22 - Welsh Ministers may give a direction that a specific development is a significant infrastructure project, if its of national significance
-



Project type	Compulsory threshold
Energy (on and offshore)	50MW+ (Onshore wind) 50MW – 350MW (All other projects)
Overhead electric lines	132KV and a minimum length of 2KM
Highways promoted by Welsh Government	Continuous length of more than 1KM
Ports and harbours	Annual capacity of handling above: <ul style="list-style-type: none"> <li>- 50,000 twenty-foot equivalent unit container ships,</li> <li>- 25,000 roll-on roll-off ships, or</li> <li>- 500,000 tonne cargo ships</li> </ul>
Radioactive waste geological disposal	All works, including investigation and preparation
Open cast coal, underground coal gasification and unconventional oil and gas	All exploitation works
Liquefied natural gas facilities and gas reception facilities	Storage capacity above 43 million cu.m per day, or flow rate above 4.5 million cu.m per day
Railways	2KM+ (Continuous stretch)
Rail freight interchanges	At least 60ha when constructed and handling at least 4 goods trains per day
Airports	1m+ passengers per year; or 5,000+ cargo movements per year
Dams and reservoirs	10m+ cu.m of water
Transfer of water resources	100m+ cu.m of water per year
Waste water treatment plants	Capacity exceeding a population of 500,000
Hazardous waste facilities	100,000+ tonnes per year (Landfill or deep storage facility) 30,000+ tonnes per year (Any other case)

# What Infrastructure Consent (IC) replaces / includes...



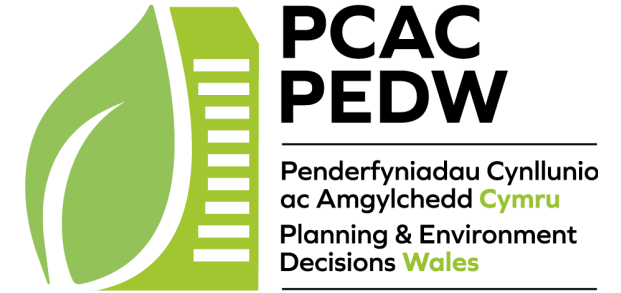
- Part 1 of the Bill defines the meaning of Significant Infrastructure Projects and the qualifying projects which will be subject to this consenting process.
  - IC will replace DNS and other existing regimes e.g. the Electricity Act 1989, the Transport and Works Act 1992, the Highways Act 1980 and the Harbours Act 1964
  - **Marine licences** (current determined by NRW) - requirement for NRW to submit a Marine Impact Report (“MIR”), which documents the likely impact on the marine environment where an applicant seeks to deem a marine licence alongside its IC
  - Includes compulsory acquisition powers (see Part 3 of Bill)
-

# Objectives of the Bill - 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**.

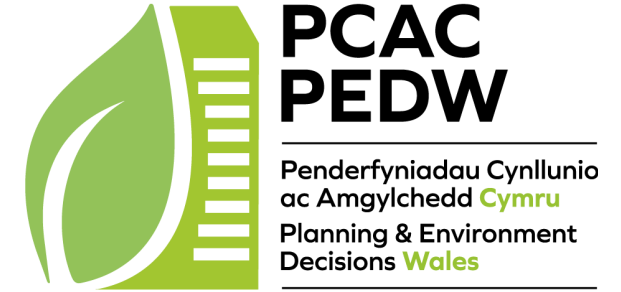
# Objectives of the Bill - Certainty



To provide certainty in terms of **timescales** for all involved, so that the public are clear on **when decisions are made**, and proceedings are not unnecessarily prolonged, and to enable developers to plan projects with more accuracy.



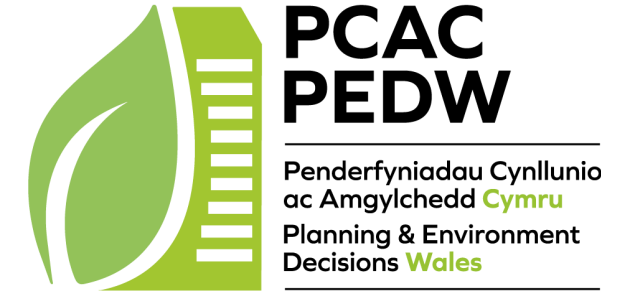
# Objectives of the Bill – Chances of success



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.

---

# Objectives of the Bill – Quality of applications



To provide **minimum bars** in terms of pre-application 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.



# Objectives of the Bill – Avoid Confusion

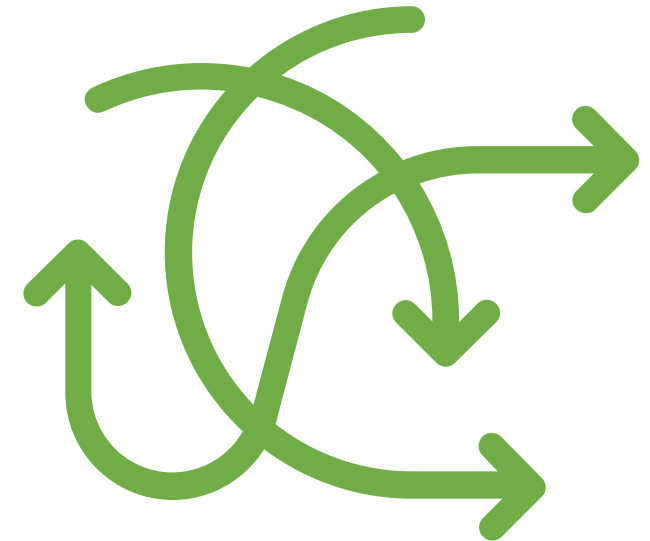
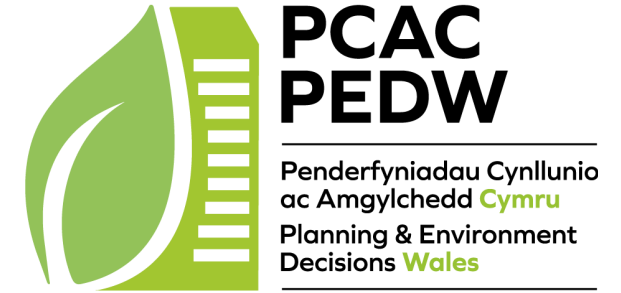


To provide a more **consistent and inclusive** process, which enables those who are not familiar with engaging with the planning process to engage more effectively.

---

# Objectives of the Bill – Limit 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.

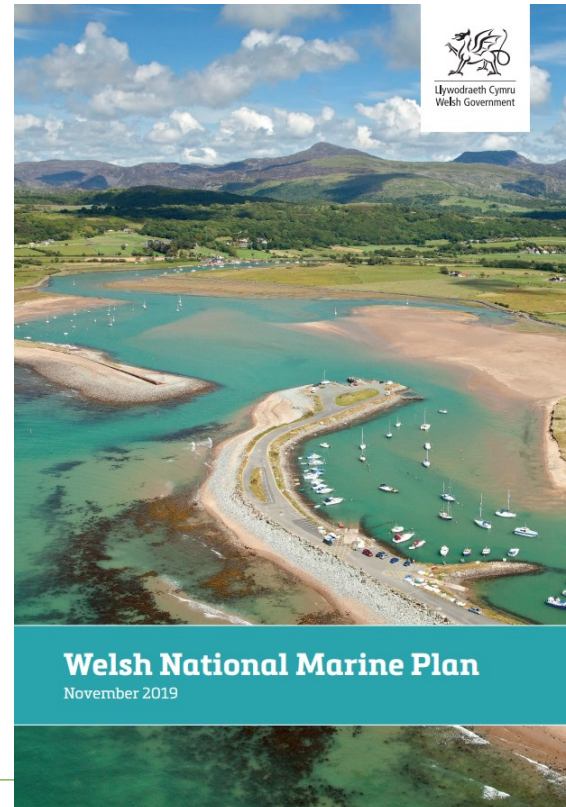
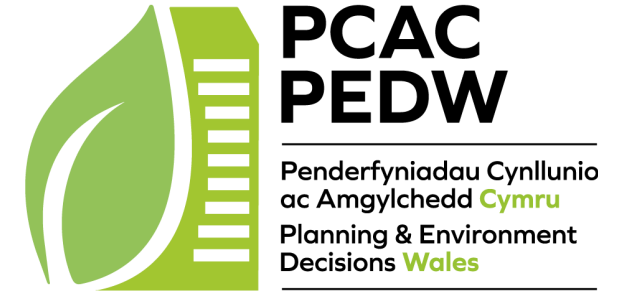




# Impact of the Bill: Decision Making

Part 5 of the Bill contains provisions about deciding applications for infrastructure consent.

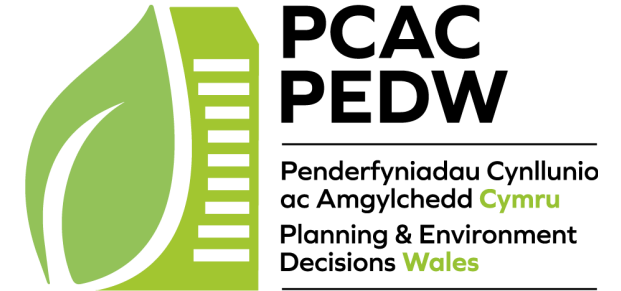
Section 53 prescribes that applications for infrastructure consent **must be decided in accordance with** any infrastructure policy statement, the National Development Framework for Wales or any marine plan.



# IC Decision Making: Policy Framework

Future Wales, WNMP and PPW provide a policy framework used to inform the determination of infrastructure projects.

FW Policies 17 and 18 provide locational and criteria specific planning policies for the determination of renewable and low carbon energy projects of national significance (10 megawatts and above).



# IC Decision Making: Have regard to...

Section 54 places a duty to have regard to the following when deciding an application for infrastructure consent:

- local impact report or marine impact report
- the examination
- any matters specified in regulations in relation to the development
- any other material considerations.



# Decision Making: Material Considerations

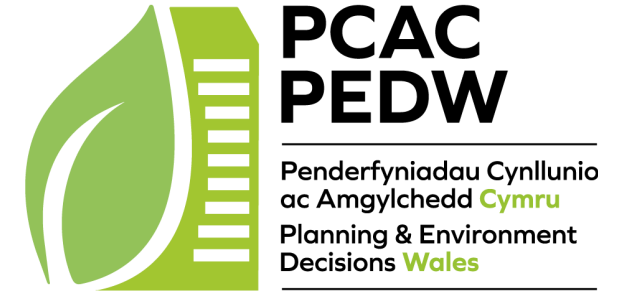
Planning Policy Wales (PPW)  
Technical Advice Notes (TANs)

Local & Strategic Development  
Plans (LDP/SDP)

Local Impact Reports & Marine  
Impact Reports

Statutory Consultee Responses

Other Representations



# Examination of IC Applications

Part 4 of the Bill sets out the processes and procedures for examining applications for infrastructure consent

**Procedure** - Section 41: Choice of inquiry, hearing or written procedure (or combination)

**Reporting** - Section 49 Following the examination, the examining authority must make a report to the Welsh Ministers setting out its findings and conclusions in respect of the application and its recommendations as to the decision to be made.

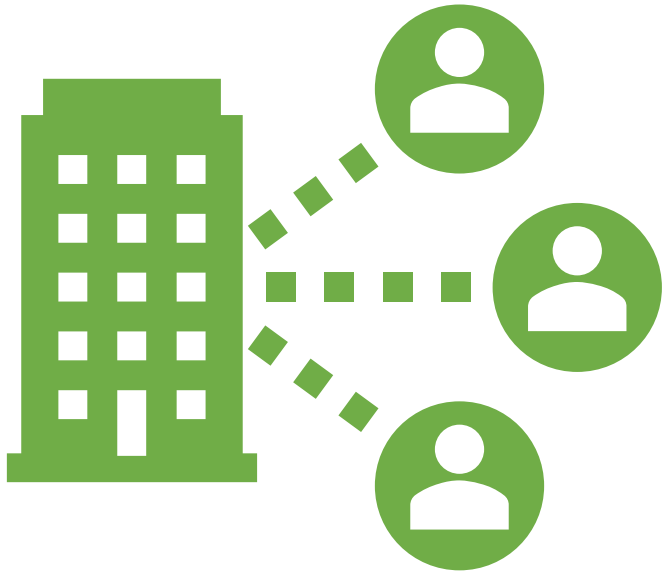


## Detail to follow...

Much of the process and procedures are reserved for future Regulations... such as:

- Process for deciding whether projects <50MW should be a SIP
  - Specific content of LIRs and MIRs under the IC regime
  - Fees for performance of infrastructure consent functions
  - Prescribed consultation mechanisms
  - Examination procedures
  - Form and content of the IC Order
-

# PEDW Action in Response to Bill



- New **Infrastructure Consenting Manager** to support the administration of efficient processing of current DNS and future IC regime
- Work with WG Planning Directorate to prepare **procedural guidance** for all involved in new IC process
- New **Digital Officer for PEDW** will help improve our digital platforms (front and back-office) to support new IC regime
- **Capacity and capability** building across PEDW to respond to additional resource demands
- **Collaborative** working with partners to coordinate action



## Contact Us:

Telephone: 0300 0604400

Email: [PEDW.Casework@gov.wales](mailto:PEDW.Casework@gov.wales)

Planning and Environment Decisions Wales

Crown Buildings

Cathays Park

Cardiff

CF10 3NQ

<https://gov.wales/planning-and-environment-decisions-wales>





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Cenedlaethol **Cymru**  
National **Infrastructure**  
Commission **Wales**



**RTPI Cymru**  
Royal Town Planning Institute  
Sefydliad Cynllunio Trefol Brenhinol

# Legal Viewpoint

Cathryn Tracey

Director

Burgess Salmon

# Initial Legal Response

**Cathryn Tracey**

14 September 2023

## Part 1 - SIPs

Principal designations of SIPs will be through the IA.

Follows the regime set out in the Planning Act 2008 for NSIPs.

Power for WM to amend the list (but limited to those categories already listed). If not need to use s22.

**How are cross border grid projects consented?**

**How is installed capacity measured?**

**How are onshore wind projects over 10MW but below 50MW consented?**

## Part 2 – Requirement for IC

Section 20 removes the need for other consents if IC required

Section 22 enables a direction to be secured specifying a development as a SIP

Section 24 – direction that development is NOT a SIP

Generally reflects s35 PA 2008 power, but projects can be directed as SIPs post application.

What would be considered ‘of national significance’?

Section 24 - Not available for NSIPs

No timeframe for determining request, or information of form of request or information to be provided or persons to be notified – all to be in regulations

## Parts 3 & 4 – Application & Examination

Notices of proposed applications, pre-app consultation and publicity

WM to determine validity, notify and publicise the application post acceptance

Procedure determined by ExA, reports to WM, WM can direct reopening of examination

**All the detail to come in regulations re criteria, timescales, forms, content**

**Resourcing?**

**Lack of fixed timetable**

**LIRs proposed – anything which can be learnt from the DNS regime?**

## Part 5 – Determination

WM can direct who determines the application – ExA or WM

Determine in accordance with policy

Associated Development

Determine within:

52 week; or

As otherwise agreed; or

As directed by the WM

All details to follow in regulations

Infrastructure Policy Statements will be critical to the SIP regime

Guidance on associated development essential

Lack of certainty on timescales

## Part 6 – Infrastructure Consent Orders

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- **Compulsory acquisition of land**
  - **Creation, interference of interest and rights in land (including navigation over water)**
  - **Operation of generating station**
  - **Keeping electric line installed above ground**
- **Surveys or soil samples**
  - **Cutting down trees or shrubs etc**
  - **Removal, disposal or relocation of apparatus**
  - **Carrying out of civil or other engineering works**
  - **Deeming a marine licence**
-

## Part 6 – cont'd

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**May remove requirement for specific consent or deem consent to have been granted**

**Will require consent or non-refusal of consenting authority within specified period**

**ICO can be changed or revoked by Order**

**Detail of what can be disappplied will be in regulations.**

**Non-refusal provisions to be welcomed**

**Broader than the PA 2008 and not limited to non-material changes**

**Scope of changes**

**Timescales**



## Parts 7, 8 & 9 – Enforcement etc

Criminal Offence - fine

Fees – specified public authorities can charge fees

**Enforcement follows the PA 2008**

**Who will be the specified authorities?**

**What will the fees be?**

**What service will applicants receive?**

## Summary

Too much in regulations with risks of inconsistencies and misunderstandings between different sets of regulations

Infrastructure Policy Statements are of critical importance

Lack of specific timescales and those that are included are in context of being capable of extension

How are 10-50MW onshore wind schemes to be consented?

Lack of clarity around cross-border projects and s2(1)(e) for above ground electric lines

Lack of detail on transitional arrangements

**Bristol**

One Glass Wharf  
Bristol BS2 0ZX

T +44 (0)117 939 2000  
F +44 (0)117 902 4400

**Edinburgh**

Atria One, 144 Morrison Street  
Edinburgh EH3 8EX

T +44 (0)131 314 2112  
F +44 (0)131 777 2604

**London**

6 New Street Square  
London EC4A 3BF

T +44 (0)20 7685 1200  
F +44 (0)20 7980 4966

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**Infrastructure (Wales) Bill Event**  
**18<sup>th</sup> September 2023**