

Infrastructure (Wales) Bill: Summary of recommendations

December 2023

This report brings together recommendations made by Senedd committees as a result of their scrutiny of the [Infrastructure \(Wales\) Bill](#) during Stage 1 of its progress through the Senedd. The Minister's response to each Committee report is published on the [Bill's homepage](#).

General

The Committee recommends that the Senedd supports the general principles of the Bill. (Climate Change, Environment, and Infrastructure Committee)

The Minister should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place. (Legislation, Justice and Constitution Committee)

The Minister should clarify why the Bill does not include overview sections, particularly for Parts 1 to 7, to describe what each part is seeking to achieve and how they relate to each other. (Legislation, Justice and Constitution Committee)



Legislative competence

The Minister should update the Senedd on the Welsh Government's discussions with the UK Government regarding the outstanding Minister of the Crown consents and the transfer of legislative competence for the consenting of energy generating stations offshore between the edge of the territorial sea and the edge of the Welsh zone. (Legislation, Justice and Constitution Committee)

Transitional arrangements

The Minister should publish an indicative timetable setting out when the transitional arrangements to the new regime will be determined. (Climate Change, Environment, and Infrastructure Committee)

Resources

The Welsh Government and public bodies must work together to find the most effective means of delivering the specialist advice necessary across different geographical locations. The Minister should report back to this Committee on progress within the next 6 months. (Climate Change, Environment, and Infrastructure Committee)

Subordinate legislation - general

The Minister should review the Bill and put on its face information already known about, for example, the requirements on or the functions of people, and who those people are, so that there is a better balance between what the Senedd is being asked to approve, and consequently what detail will be found in the Act, and what will be left to subordinate legislation. (Legislation, Justice and Constitution Committee)

The Minister should provide to the Senedd a clear, full and detailed list of each and all delegated powers in the Bill, by reference to specific location, type and scrutiny procedure. (Legislation, Justice and Constitution Committee)

The Welsh Government should publish a detailed timetable for the preparation, publication, and, where appropriate, consultation, of the subordinate legislation arising from the Bill. (Climate Change, Environment, and Infrastructure Committee)

The Welsh Government should publish in draft key pieces of subordinate legislation and consult stakeholders before final versions are taken forward. (Climate Change, Environment, and Infrastructure Committee)

The Minister should ensure there is sufficient time available for Senedd committees to consider the key pieces of subordinate legislation in the Bill that will follow the affirmative procedure. (Climate Change, Environment, and Infrastructure Committee)

The Minister should ensure that digital versions of the secondary legislation arising from the Bill, and associated guidance and documents, are available in one place on the internet that is easily accessible to the public, public bodies and developers. (Climate Change, Environment, and Infrastructure Committee)

Finance - general

The Committee is broadly content with the financial implications of the Bill as set out in the Regulatory Impact Assessment, subject to the comments and recommendations in this report. Should there be significant changes to the Regulatory Impact Assessment as a result of the recommendations made in this report, the Committee may consider those changes in more detail. (Finance Committee)

The Committee believes that the methodology paper provided in relation to this Bill serves as a good practice model for future legislation. Therefore, we recommend that the Welsh Government considers including such details, which are used to inform the cost estimates arising from each Bill, within Regulatory Impact Assessments, rather than as separate documents, as a matter of principle. (Finance Committee)

The Committee recommends that the Minister undertakes the following and that the information is included in a revised Regulatory Impact Assessment, after Stage 2:

- undertakes further modelling work to identify the costs and benefits for communities and/or interested parties arising from the Bill. This information should include an analysis to show the potential range of costs and benefits that might be incurred; and
- provides examples or further information on community involvement, how that currently works, who is involved and how it might change as a result of the Bill. (Finance Committee)

The Committee recommends that the Minister undertakes further work in regard of the financial benefits arising from a streamlined consenting process. This information should be included in a revised Regulatory Impact Assessment, after Stage 2. (Finance Committee)

The Committee recommends that the Minister provides further information on how fees will differ under the new regime, compared to the current regime, and the impact of this on relevant stakeholders. (Finance Committee)

The Committee recommends that the Minister provides further information on the process associated with the optional threshold, including whether this flexibility could lead to some variability in the efficiencies outlined in the RIA. (Finance Committee)

The Committee recommends that any post-implementation review assesses the overall costs and benefits of the new consenting regime and whether this met the expectations set out in the Regulatory Impact Assessment. (Finance Committee)

Part 1 - Significant Infrastructure Projects

The Welsh Government should engage with stakeholders on the criteria in Part 1 to resolve concerns before the Bill completes its passage through the Senedd. (Climate Change, Environment, and Infrastructure Committee)

Section 17

The Minister should clarify why the fields in section 17 do not have their associated criteria included on the face of the Bill. (Climate Change, Environment, and Infrastructure Committee)

The Minister should

- provide clarity and detailed justification for the inclusion of flood prevention and minerals (in section 17(4)(b) and (c) respectively) as types of project which may be added to the scope of the Bill (if and when enacted) via subordinate legislation;
- explain why criteria for the type of development that would fall under the fields of flood prevention and minerals were not included on the face of the Bill on introduction. (Legislation, Justice and Constitution Committee)

As suggested by stakeholders, to enable public consultation the Minister should consider the use of a super-affirmative procedure in respect of the making of regulations under section 17(1) which make provision for projects relating to the fields of flood prevention and minerals. (Legislation, Justice and Constitution Committee)

Part 2 – Requirement for Infrastructure Consent

Section 22

The Minister should clarify her position on the inclusion of an “opt-in” provision to the SIP regime and explain whether she considers that the power in section 22 of the Bill could be used to facilitate such a procedure. (Climate Change, Environment, and Infrastructure Committee)

The Minister should provide additional detail and reasoning as to why the regulation-making power in section 22 is needed in addition to the power in section 17. (Legislation, Justice and Constitution Committee)

In conjunction with recommendation 8 (*the recommendation above*), the Minister should explain the consequences if section 22 were removed from the Bill, and what would the Minister be prevented from doing that could not be achieved with section 17. (Legislation, Justice and Constitution Committee)

Section 24

Section 24 should be amended to include details of what a direction made under subsection (1) may include. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Section 24 should be amended to require that a direction made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd. (Legislation, Justice and Constitution Committee)

The Minister should bring forward amendments to section 25 to mandate the publication of guidance in relation to the circumstances when Welsh Ministers can use the section 22 or 24 powers of direction. (Climate Change, Environment, and Infrastructure Committee)

Section 25

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The Minister should bring forward amendments to section 25 to specify a time limit within which the Minister must respond to a qualifying request from a developer for a direction under section 22 or 24. (Climate Change, Environment, and Infrastructure Committee)

Part 3 – Applying for Infrastructure Consent

The Minister should publish guidance for stakeholders on best practice and expected standards for community consultation. (Climate Change, Environment, and Infrastructure Committee)

The Minister should bring forward amendments to the Bill to provide more clarity in relation to consultation and publicity processes. The Minister should consider as a starting point, the provisions of the Planning Act 2008. (Climate Change, Environment, and Infrastructure Committee)

Section 30

The Minister should, in her response to this Report, set out the timelines for making regulations under section 30. Given the centrality of public consultation to the new regime, the Minister should publish and consult on the draft regulations. (Climate Change, Environment, and Infrastructure Committee)

Section 31

Section 31 of the Bill should be amended so that details of the functions referred to in subsection (5) which may be included in regulations made under subsection (4) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Section 33

Section 33(2)(a) of the Bill should be amended to state that Natural Resources Wales, and any other known body/person, must be given a notice of any

application for infrastructure consent. (Legislation, Justice and Constitution Committee)

Section 34

Section 34 of the Bill should be amended to add details of the requirements which may be imposed and on whom by regulations under subsection (1)(b). The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Section 34 of the Bill should be amended so that details of the functions referred to in subsection (2) which may be conferred by regulations made under subsection (1) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Section 38

The Minister should clarify the change she will seek to make to section 38 of the Bill, in line with our comments that this section contains one regulation-making power in subsection (1). In particular, the Minister should clarify whether an amendment is proposed to change the reference in subsection (3) from a reference to subsection (2) to instead be a reference to subsection (1), or if a more substantial amendment will be required to make the necessary changes to section 38. (Legislation, Justice and Constitution Committee)

Part 4 - Examining Applications

Section 42

The Minister should, in response to this Report, set out the circumstances where she considers that an application could be determined by means of an inquiry. (Climate Change, Environment, and Infrastructure Committee)

The Minister should clarify, and provide the necessary detail of, the powers contained within section 42 of the Bill. (Legislation, Justice and Constitution Committee)

Section 42 of the Bill should be amended to set out the details of the procedure for situations where the decision-making body is to be changed from the

examining authority to the Welsh Ministers, and vice versa. (Legislation, Justice and Constitution Committee)

Section 43

Section 43 of the Bill should be amended so that the principles relating to the power of entry, as well as any limitations or criteria that should apply to the making of the regulations, should be on the face of the Bill. (Legislation, Justice and Constitution Committee)

The Bill should be amended so that the draft affirmative scrutiny procedure applies to the exercise of the regulation-making power in section 43. (Legislation, Justice and Constitution Committee)

Section 45

Section 45 of the Bill should be amended so that details of the functions of an appointed representative referred to in subsection (6) which may be conferred in regulations are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Part 5 - Deciding Applications for Infrastructure Consent

Section 52

The Minister should bring forward amendments to ensure that Welsh Ministers are the default decision-makers for significant infrastructure projects. Notwithstanding this, the Minister should ensure the Bill contains provisions to enable the Welsh Ministers to direct that an examining authority has the function of deciding the application in certain, specified circumstances. Regulations should specify the criteria that must be applied in making such a direction. (Climate Change, Environment, and Infrastructure Committee)

The Minister should publish the criteria for deciding on a direction under section 52. (Climate Change, Environment, and Infrastructure Committee)

The Minister should provide further detail and clarity as to why the regulation-making power in section 52 is necessary. (Legislation, Justice and Constitution Committee)

If section 52(1) is retained, the Bill should be amended to require regulations to be made under section 52 to be subject to the draft affirmative procedure. (Legislation, Justice and Constitution Committee)

Section 53

The Minister should explain why the issue of the primacy of infrastructure policy statements over national plans was still being considered after the introduction of the Bill. (Climate Change, Environment, and Infrastructure Committee)

The Welsh Government should engage with stakeholders to address concerns about the need for infrastructure policy statements under section 53 to fill policy gaps in national plans. (Climate Change, Environment, and Infrastructure Committee)

The Minister should bring forward amendments to ensure that infrastructure policy statements are subject to consideration and agreement by the Senedd. (Climate Change, Environment, and Infrastructure Committee)

Section 55

Section 55 of the Bill should be amended to include details about the matters that the examining authority or the Welsh Ministers may disregard in deciding an application for infrastructure consent. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Section 56

The Minister should bring forward amendments to set out on the face of the Bill a detailed timetable for the 52-week period for deciding on an application. (Climate Change, Environment, and Infrastructure Committee)

The Minister should consult stakeholders at the earliest opportunity to ensure that the timelines on the face of the Bill are appropriate. If, as a result of the consultation, she believes they need to be changed, that can be achieved through subordinate legislation. (Climate Change, Environment, and Infrastructure Committee)

If the Minister determines to extend the 52-week period in accordance with section 56(2), the Minister must notify the Senedd by means of a written

statement. The Minister should bring forward amendments at Stage 2 to give effect to this. (Climate Change, Environment, and Infrastructure Committee)

The Minister should clarify why section 56(1)(b) is required, and amend the Bill to provide more details about the limitation of this provision and how the period agreed will be made public. (Legislation, Justice and Constitution Committee)

The Minister should clarify why the approach adopted in section 56(2) as regards the direction-making power is necessary. (Legislation, Justice and Constitution Committee)

Section 56 should be amended to include details of what a direction made under subsection (2) may include. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Section 56 should be amended to require that a direction made under subsection (2) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd. (Legislation, Justice and Constitution Committee)

The Minister should clarify why section 56(3)(b) is required and amend the Bill to provide more details about the limitations that apply to this provision, including in particular the restrictions that apply to the time-period during which a direction under section 56(3)(b) may be given. (Legislation, Justice and Constitution Committee)

The Bill should be amended to require regulations to be made under section 56(6) of the Bill to be subject to the draft affirmative procedure. (Legislation, Justice and Constitution Committee)

Section 57

Section 57(6) should be amended to constrain the power to what is necessary and in line with how the Minister has stated the power is intended to be used. (Legislation, Justice and Constitution Committee)

Section 59

Section 59 should be amended to make it a requirement for a statement prepared under subsections (1) or (2) to be provided to the applicant of an infrastructure consent order. (Legislation, Justice and Constitution Committee)

Part 6 – Infrastructure Consent Orders

Section 60

The Minister should explain why, in respect of section 60(6)(a) and (b), it is appropriate that an infrastructure consent order may amend, modify or exclude enactments without any scrutiny or oversight by the Senedd. (Legislation, Justice and Constitution Committee)

Section 60 should be amended to require that an order made in accordance with the section must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd. (Legislation, Justice and Constitution Committee)

Section 82

The Bill should be amended so that orders made under section 82 which create criminal offences must be subject to the draft affirmative scrutiny procedure. (Legislation, Justice and Constitution Committee)

Sections 87 and 88

Section 87 should be amended to require that an order made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd. (Legislation, Justice and Constitution Committee)

The provisions contained in sections 87 and 88 relating to the change or revocation of infrastructure consent orders should be amended to include details of the safeguards that will be in place in respect of the use of the power in section 87(1) so as to ensure there are no unintended consequences. (Legislation, Justice and Constitution Committee)

Section 88 should be amended to make it a requirement for a notice issued under subsection (6) to be provided to the person who originally applied for the infrastructure consent order. (Legislation, Justice and Constitution Committee)

Section 92

Section 92 should be amended to include details of what may be considered as an operation that is not a “material option”. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative

procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Part 7 - Enforcement

The Minister should set out the assistance that will be available to local planning authorities where enforcement proceedings are necessary. (Climate Change, Environment, and Infrastructure Committee)

The Minister should consider whether provisions on so-called “padlock powers” in relation to temporary stop notices should be included in the Bill. (Climate Change, Environment, and Infrastructure Committee)

The Minister should clarify in guidance the routes that are open to the public to raise concerns about unauthorised development. (Climate Change, Environment, and Infrastructure Committee)

Section 115

The Minister should provide additional detail and clarity as to what activities will not be prohibited by a temporary stop notice under section 115(1). (Legislation, Justice and Constitution Committee)

Part 8 – Supplementary Functions

The Minister should provide an update during the Stage 1 debate on discussions with consultees, local planning authorities, and other stakeholders about how full cost-recovery will be achieved. (Climate Change, Environment, and Infrastructure Committee)

Section 121

Section 121 of the Bill should be amended so that details of the functions referred to in subsection (5) which may be contained in regulations made under subsection (1) are listed on the face of the Bill. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Section 122

The Minister should explain her understanding of the meaning of a project of “real substance” in section 122, and set out her position on the level of fine that may be

given for an offence under this section. (Climate Change, Environment, and Infrastructure Committee)

Section 124

Where the Welsh Ministers, in accordance with section 124, determine to designate a document as an infrastructure policy statement for the purpose of the Bill, the Minister should notify the Senedd. The Minister should ensure that the Senedd has considered and agreed the document before any such designation can be made. (Climate Change, Environment, and Infrastructure Committee)

Section 126

Section 126 of the Bill should be amended to require Natural Resources Wales, and any other known body/person, to be consulted about a valid application for infrastructure consent. (Legislation, Justice and Constitution Committee)

Section 127

The Minister should clarify the details of the “things” a public authority may be required to do as directed by the Welsh Ministers using the power in section 127(1), and the Bill should be amended to set out this detail. (Legislation, Justice and Constitution Committee)

The Minister should provide further detail and clarity as to why the direction-making power in section 127(1) is necessary, and why the statutory requirements to be placed on a public authority are not included on the face of the Bill. (Legislation, Justice and Constitution Committee)

Section 127 should be amended to include the list of relevant devolved Welsh authorities to which the section will apply. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

The Bill should be amended so that the draft affirmative scrutiny procedure applies to the exercise of the regulation-making power in section 127(4). (Legislation, Justice and Constitution Committee)

Section 128

The Minister should clarify why the approach adopted in section 128(1) as regards the direction-making power is necessary. (Legislation, Justice and Constitution Committee)

Section 128 should be amended to include details of what a direction made under subsection (1) may include. The Bill may also be amended to include a regulation-making power that is subject to the draft affirmative procedure which enables the amendment of this list. (Legislation, Justice and Constitution Committee)

Section 128 should be amended to require that a direction made under subsection (1) must be laid before the Senedd, and there should be an accompanying statement to all Members of the Senedd. (Legislation, Justice and Constitution Committee)

Section 129

The Bill should be amended to require that regulations made under section 129(2) of the Bill are subject to the draft affirmative procedure. (Legislation, Justice and Constitution Committee)