

Consultation reference: WG34221

## **Annex B - Consultation Response Form**

### **Changes to the consenting of infrastructure**

We are seeking your views on our proposed interim arrangements (Part 1), our proposals to establish a bespoke infrastructure consenting process (Part 2) as well as miscellaneous compulsory purchase reforms (Part 3).

***Please submit your comments by 23 July 2018.***

If you have any queries on this consultation, please email:  
[planconsultations-g@wales.gsi.gov.uk](mailto:planconsultations-g@wales.gsi.gov.uk) or telephone Lewis Thomas on 0300 025 3201.

**Data Protection**

Consultation reference: WG34221

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing. Names or addresses we redact might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Your data will be kept for no more than three years

Under the data protection legislation, you have the right:

- to access the personal data the Welsh Government holds on you;
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

The contact details for the Information Commissioner's Office are:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: [www.ico.gov.uk](http://www.ico.gov.uk)

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:

Welsh Government  
Cathays Park

Consultation reference: WG34221

Consultation reference: WG34221

<b>Changes to the consenting of infrastructure in Wales</b>		
<b>Date of consultation period: 30 April 2018 to 23 July 2018</b>		
<b>Name</b>		
<b>Organisation</b>	<b>National Infrastructure Planning Association</b>	
<b>Address</b>		
<b>E-mail address</b>	<b>info@nipa.uk</b>	
<b>Type</b> <i>(please select one from the following)</i>	Businesses/ Consultants	
	Local Planning Authority	
	Government Agency/Other Public Sector	
	Professional Bodies/Interest Groups	
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	
	Other (other groups not listed above) or individual	

**Consultation Questions**

		Yes	Yes (subject to comment)	No
<b>Q1</b>	Do you agree with our interim arrangements for onshore electricity generating stations? If not, why not?			

Consultation reference: WG34221

**Comments:**

**This submission is made on behalf of the National Infrastructure Planning Association (NIPA), which brings together all those involved in the planning and authorisation of nationally significant infrastructure projects in the UK, focusing on projects in the areas of energy, transport, water, waste and waste water. Our members are diverse and include the leading promoters and practitioners in relation to UK infrastructure planning, as well as those stakeholders who engage in the process.**

**We build relationships between the public, private and voluntary sectors, actively contribute to ongoing policy discussion and formulation and develop and champion best practice.**

**The submission has been prepared by a Working Group chaired by Julian Boswall (NIPA Board Member) including developers, local authorities, planning lawyers, planning consultants, communications consultants and environmental consultants, with wide experience of consenting major infrastructure in Wales, as well as substantial experience elsewhere in the UK.**

**Response to Q1:**

**NIPA would have much preferred that interim arrangements were not necessary, and that the system moved from the present arrangements seamlessly to the new regime set out in Part 2. The existence of the interim arrangements will create the need for two sets of transitional arrangements and has already needlessly complicated the consenting of the type of development projects which the Welsh Government is keen to facilitate. NIPA, however, acknowledges that the decision to bring in the Wales Act 2017 changes on 1 April 2019 has been made, and was outside the Welsh Government's control.**

**There is some concern, in respect of the interim arrangements, over the practicalities of using the DNS regime for larger, more complex projects that would have been DCOs prior to April 2019 - particularly in terms of the DNS regime's requirements for consultation on a full draft application, and for the submission of a detailed application. For some projects this represents a step change from what is required for DCO in relation to level of design detail, and a commitment to investment in significant design costs prior to the principle of development being judged acceptable. This has potential to reduce attractiveness of investment in Wales compared to elsewhere in the UK. The lack of a definitive policy statement on the 'need' case (as is presented in the NPSs in England) will add to this uncertainty.**

**The detailed transitional arrangements need to be clarified as a matter of urgency, so that applications in preparation know which regime will apply, depending on the timetable which the application follows. The consultation indicates that the DNS thresholds will be increased from 1 April 2019. A developer of a project between 50 and 350MW will therefore need to make a decision as to whether to aim to apply before or after the deadline so as to be a DCO or a DNS application. It would be helpful to have clarity on the transitional provisions so that pre-application work undertaken before 1st April 2019 (on the assumption that a DCO application would be required) will be regarded as compliant with the DNS regime.**

Consultation reference: WG34221

<b>Q2</b>	Do you agree with our short-term proposals regarding the storage of electricity? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

**NIPA supports the removal of storage schemes (save for hydro pumped storage) from the DNS regime as proposed. NIPA would, however, highlight that storage schemes are often brought forward with other generation proposals as part of a multi-stranded application. There will need to be clarity as to how such hybrid scenarios are addressed. NIPA considers that this should only apply to stand alone storage schemes.**

**NIPA would also suggest that a site area threshold (of say, 1ha) is introduced so that other small-scale energy generating schemes (e.g. STOR projects) can also be excluded from the DNS regime. It should be possible to include parts of a development which would not be a DNS if promoted separately, in a DNS application together with the elements which do constitute a DNS. This principle should apply generally and not be limited to energy storage.**

<b>Q3</b>	Do you agree with our interim arrangements for overhead electric lines? If not, why not?	Yes	Yes (subject to comment)	No

Consultation reference: WG34221

Comments:

**NIPA supports the interim proposal to make devolved overhead line applications Developments of National Significance, to ensure a unified decision making process, together with decision making transferred to inspectors, subject to the Welsh Ministers power to recover jurisdiction. Clear guidance on the circumstances for recovered jurisdiction will need to be issued before April 2019. NIPA supports the carrying over of exemptions.**

<b>Q4</b>	Do you agree with interim arrangements for offshore electricity generating stations? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

**NIPA supports the offshore interim arrangements. The interaction between a section 36 application and a marine licence administratively needs to be reviewed by Welsh Government. In Scotland, these consents are progressed in parallel and determined at the same time. It is important for the attractiveness of Wales as an investment destination that these two consents operate in the same way, which has not always been the case with the DCO regime. NIPA notes the new fees proposed and the attempt to link the fees to the complexity and impacts of a scheme rather than its output. There is a danger that the increase in fees may be a material factor in smaller schemes coming forward (see our response to Q2).**

<b>Q5</b>	Do you agree with our proposals to seek the transfer of power of necessary wayleaves and compulsory acquisition connected to a generating station?	Yes	Yes (subject to comment)	No

Consultation reference: WG34221

Comments:  
**On the issue of the possible transfer of necessary wayleave, CPO and tree interference powers, NIPA is neutral. These powers are already de-coupled from the consenting process, under the current arrangements. It makes sense for the wayleave/CPO/tree powers to be in one place i.e. DBEIS or Welsh Government, but NIPA does not have view on whether they should be transferred.**

Q6	Do you agree with the principles (set out in Paragraphs 3.26 to 3.43) which will underpin a unified consenting process? If not, why not?	Yes	Yes (subject to comment)	No

Comments:  
**NIPA agrees with the principles outlined in paragraph 3.26 to 3.43. NIPA particularly supports the emphasis on a statutory timetable, flexibility, meaningful community engagement and quality. NIPA supports the delivery of policy through the mechanisms identified, to provide certainty, but has some concerns about whether the Welsh Government has thought through with sufficient care the way in which these frameworks are intended to interact with each other and with UK policies, to provide a coherent overall position.**

Q7	Do you agree with our proposals to remove the consenting of infrastructure from the Developments of National Significance set out under the Town and Country Planning Act 1990 process to an entirely new consenting regime?	Yes	Yes (subject to comment)	No



Consultation reference: WG34221

Comments:

**NIPA agrees with the new consenting regime superseding the DNS regime. Whilst there may be some individual projects which do not need the ‘consenting firepower’ which the new regime will provide, the benefits of having a unified regime overall outweigh these considerations**

<b>Q8</b>	Do you agree with the principle of optional thresholds for Welsh Infrastructure Projects?	Yes	Yes (subject to comment)	No

Comments:

**NIPA agrees with the principle of optional thresholds. Query if it is consistent to allow amendments of a scale which would be compulsory on a standalone basis to be optional.**

<b>Q9</b>	Do you agree it is for the Welsh Ministers to ultimately decide on a case-by-case basis whether an optional Welsh Infrastructure Project qualifies as such? If not, why not?	Yes	Yes (subject to comment)	No

Consultation reference: WG34221

Comments:

The Paper says in paragraph 4.17 that it will be for the developer to choose whether to invoke the optional threshold. We assume this question is getting at the situation where there is some doubt as to the interpretation of whether a particular scheme meets a particular definition. On that basis NIPA agrees that it must be for Welsh Ministers to resolve that, which would be subject to JR.

We suggest that there should be a mechanism available (akin to section 35 of the 2008 Act) whereby a developer can obtain formal confirmation that its application will be treated as an optional WIC, where there is any doubt. This would avoid the risk of making an application only to discover Welsh Ministers took a different view. (The DCO regime has suffered to some extent around the issue of when a developer knows for certain that particular works will be regarded as associated development, and it would be good to learn from that experience.)

Q10	Do you agree designation in the National Development Framework for Wales should be a criteria as to whether a development qualifies as a Welsh Infrastructure Project? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

At this stage there is some uncertainty about the precise content and approach of the NDF. Given the comprehensive thresholds already set out for WIC, it is arguably the case that an NDF criteria is not needed, especially since the thresholds can be altered more readily than a review of the NDF. Accordingly, NIPA view on this is neutral pending more detail on the NDF approach.

Q11	Do you agree with the proposed compulsory and optional thresholds for Welsh Infrastructure Projects? If not, why not?	Yes	Yes (subject to comment)	No

Consultation reference: WG34221

Comments:

**NIPA considers that site area thresholds should be considered in addition to the existing thresholds to ensure that there is more proportionality. We would also comment that from experience with the highways DCO definition, Welsh Government should provide a clear definition of what, exactly, is included within the “area of development”.**

**There is a strong case for solar schemes being measured by reference to their AC export capacity rather than their nominal DC capacity, which could be reflected in the threshold.**

**Because of the various water-related consents required for hydro-electric schemes an optional threshold of 1 MW for hydro-electric schemes (c.f. Section 36 consents in Scotland.) should be considered to avoid the need for separate applications to NRW for water-related licences and permits.**

<b>Q12</b>	Do you agree with our proposals to remove the need for consent under the Electricity Act 1989 for all development in the Welsh inshore area? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

**Whilst NIPA recognises that a case might be made for simplifying the regime such that only a marine licence is required below 50MW, unless a project chooses the Optional WIC route, it is notable that no other part of the UK offshore regime has gone that far. In particular in Scotland, the Electricity Act applies from 1MW above. NIPA believes that a fuller consideration of the issues would be warranted before taking this step. For example, the Electricity Act 1989 contains environmental duties under Schedule 9 which have always been considered important, which would no longer apply.**

**The marine licence regime came from an amalgam of the predecessor regimes under the Food and Environment Protection Act and the Coast Protection Act. It was always recognised that the Electricity Act consent was taking a broader strategic, energy policy view than the narrower perspective of the marine licence regime and its predecessors. It feels a step too far to remove the operation of the Electricity Act as proposed without a much fuller consideration of the issues, which the Consultation Paper does not present.**

Consultation reference: WG34221

Q13	Do you agree with our proposals for a Welsh Infrastructure Consent to be either in the form of a standardised consent or a statutory instrument, dependent on the type of application made? If not, why not? proposals?	Yes	Yes (subject to comment)	No
<p>Comments:</p> <p><b>NIPA would support a model consent and model statutory instrument, as the basis for drafting consents and SIs. It would also welcome the model consent and model order being informed by existing consenting language to avoid excessive reinventing of the wheel. The range of infrastructure types covered by the regime will mean that (as with the original DCO model order) it will need to take account of specific issues associated with different sectors e.g. harbours.</b></p> <p><b>In considering the structure of the model SI/Order we consider it would be useful to consider the experience of using deemed consents under the Electricity Act 1989 and Planning Act 2008 regimes, and how the balance should be struck between the disapplication approach and the deemed consent approach in a cross-sectoral unified WIC regime.</b></p>				

Q14	Do you agree with the notion of fast-tracking certain classes of development? If yes, please specify where this may be suitable?	Yes	Yes (subject to comment)	No
<p>Comments:</p> <p><b>The concept of fast tracking is not developed in any detail in the consultation. This would introduce a third possible timeline for a scheme within the system. The main basis for fast tracking would have to be on an assessment that the inherent complexity of the scheme, the nature and scale of the impacts involved and the level of representations justified a fast track approach. We do not think it is possible to specify ‘classes’ of development save in these terms.</b></p> <p><b>This would imply giving the decision on fast tracking to the Welsh Ministers, where the applicant has had the opportunity to make a written submission with the application as to whether it is suitable for fast tracking and, say, that is supported by the relevant local planning authority.</b></p>				

Consultation reference: WG34221

<b>Q15</b>	Do you agree with our proposals to disapply the need for certain authorisations attached to the main development? If yes, please specify which authorisations may be included in a Welsh Infrastructure Consent?	Yes	Yes (subject to comment)	No

Comments:

**NIPA supports the list of proposed disapplications in paragraph 5.3. NIPA also supports the approach in paragraph 5.4 i.e. that the other consents listed are optional. It is important that the developer has the choice, even though generally the developer will want to maximise the number of secondary consents included.**

<b>Q16</b>	Do you agree the National Development Framework, Welsh National Marine Plan and topic-based policy statements should for the policy basis for determining whether Developments of National significance should proceed or not? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

**There is a lack of clarity over the role of the NDF and how it will work in conjunction with PPW. There needs to be clarity on the hierarchy. For example, should TAN8 be repealed and replaced with a criteria based approach in the NDF, supported by PPW? The status, if any, of National Policy Statements for WIC applications needs to be clear.**

<b>Q17</b>	Do you agree with our proposals for pre-application consultation to form the basis of the Welsh Infrastructure Consent process? If not, why not?	Yes	Yes (subject to comment)	No

Consultation reference: WG34221

Comments:

**NIPA does not support the proposal to require developers to consult on their full draft application documents. The effort and expense it takes to prepare a full suite of application documents means that there is considerable reluctance to change the application at that stage. Furthermore, it opens the developer to criticism that everything is decided and the consultation is not real.**

**There is mention of consultation prior to the statutory consultation, but there will need to be real clarity if developers are expected as a matter of course to carry out multiple consultation stages, as it is not justified for many projects. The approach in the DCO regime is preferred and has worked well, which gives more discretion to the developer, alongside good practice guidance, and the discipline of the risk of non-acceptance.**

<b>Q18</b>	Do you agree with our proposals to remove inquiries from the process for determining Developments of National Significance and for hearings only to be held in place? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

**There is no doubt that inquiries are the most searching form of examination, even if they have weaknesses as well. As an objector the hearing format can be frustrating as it does not allow direct questioning of the applicant by way of cross examination.**

**It would be better if the inquiry format were available on a topic basis, to give the flexibility of allowing it by exception for contentious issues. The next best option is (as with DCO hearings) to allow formal requests for cross examination in hearings. In any event, there needs to be clarity on the role of the inspector in a hearing. In the DCO process too often inspectors act as if their role is simply to put the parties under pressure to reach a consensus, rather than to act as an independent and informed inquisitor of the application, guided rather than limited by the representations submitted.**

<b>Q19</b>	Do you agree with our proposals regarding variations during the determination process and post-consent	Yes	Yes (subject to comment)	No

Consultation reference: WG34221

	variations? If not, why not? If you agree, please suggest ways of fast-tracking those variations.			
--	---	--	--	--

Comments:  
**The Yes/Yes but comment/No choice is not easy to apply to our answers to these questions.**

**(A) Variations during the application process.** NIPA considers that the balance struck in current practice in the DCO regime is about right and the WIC regime should follow this.

**(B) Variations post consent.** These are becoming a real problem for the DCO regime as there is no statutory timetable for determining applications, which are often extremely important with substantial investment under way with strict timelines linked to CfD contracts and other important commercial matters. NIPA would recommend that the variation regime is based on the section 36C Electricity Act regime, as it provides flexibility to take account of the significance of the application, meaning an application can go through a fast track process where appropriate. This could be refined by introducing a statutory timetable for different tracks within the overall process.

Where the deemed consent route is followed, there needs to be clarity as to how the variation procedure will work in relation to deemed consents. There are lessons to be learned from the deemed marine licence DCO regime (where variations are dealt with by the MMO, despite not being the granting authority) and deemed planning permission regime under the Electricity Act 1989. There may be an opportunity, for example, for the deemed consent approach to allow a more proportionate variation procedure with variations granted by the relevant ‘stand alone’ consenting body.

<b>Q20</b>	Do you agree the Local Planning Authority is the relevant onshore enforcement authority and the Welsh Ministers is the relevant offshore enforcement authority? If not, why not?	Yes	Yes (subject to comment)	No

Consultation reference: WG34221

Comments:

**NIPA agrees that the starting point should be that the LPA is the onshore enforcement authority and the Welsh Ministers the offshore enforcing authority. There is, of course, an overlap between the TCPA regime and the marine licence regime in the intertidal area, which needs to be addressed. Also, the position regarding secondary consents which are not normally granted by the LPA needs to be addressed. If, for example, an environmental permit or other consent or licence normally granted and enforced by NRW (e.g. a water abstraction licence or certain types of wildlife consents) is included within a WIC, it would make more sense for NRW to be the enforcing authority for that element of the WIC.**

<b>Q21</b>	Do you agree with our proposals regarding the compulsory acquisition of land? If not, why not?	Yes	Yes (subject to comment)	No

Comments:

**NIPA agrees with the compulsory acquisition proposals which are aligned with classic and correct compulsory acquisition principles. The one area of disagreement we have is with the right to be heard, which we think should be absolute for human rights compliance reasons.**

<b>Q22</b>	Do you have any other comments to make on both Parts 1 and 2 of this consultation?	Yes	No



Consultation reference: WG34221

**Comments:**

**NIPA acknowledges that Welsh Government has given a great deal of careful thought to these proposals, and has sought to learn the lessons from the DCO and other regimes. In addition, NIPA agrees that a unified regime will make the system better understood by all stakeholders once it has bedded down. NIPA is conscious that this is the first stage of a process, and therefore it is not appropriate to seek to pick up every point of detail across an entire new consenting regime. NIPA is keen to maintain a dialogue with Welsh Government, and would make the following additional points:**

- a. There is a danger that the role of the local planning authority is down played in the current proposals. As the host authority and enforcing authority it is important that the LPA’s role is significant so that its local knowledge and its legitimacy in the eyes of local people is fully taken into account, particularly in relation to consents which would otherwise be determined by the LPA. This extends to the resourcing and costs of participation by LPAs, and the approach to reimbursing the costs of LIRs. In addition, there should be greater clarity on the circumstances in which Welsh Government would expect a Planning Performance Agreement to be in place.**
- b. It is essential that the WIC regime allows for a design/Rochdale envelope approach and does not seek to compel applicants to make fully detailed applications for these major projects, which is unrealistic and will deter investment.**
- c. Clarity on how far associated development can be included is essential.**
- d. There is no mention of how section 106 agreements will be dealt with procedurally at different stages.**
- e. Is section 42 of the Wales Act only going to apply to grid connections included with the generation station application, or will it apply to separate grid applications which serve the same purpose?**
- f. The structure and drafting of the model SI and model SI should minimise the creation of new consents and new consenting language so as to ensure a smooth transition, and consistent interpretation and enforcement alongside the standalone regime.**
- g. It will be essential that there is full Guidance on the operation of the WIC regime, to ensure a smooth transition and operation of the new regime.**
- h. A clear and robust definition of ‘associated with a devolved power station’ will be required.**

Q23	Do you agree with our criteria for delegating non-Ministerial Compulsory Purchase Order cases for decision by an Inspector? If not, why not?	Yes	Yes (subject to comment)	No

Consultation reference: WG34221

Comments:

<b>Q24</b>	Do you agree with the intention to amend, via primary legislation, section 5(4) of the Acquisition of Land Act 1981 to broaden the power to award costs to parties in relation to compulsory purchase orders (CPOs) being made to facilitate development and other land uses, or for highway purposes?	Yes	Yes (subject to comment)	No

Comments:

**Evidence**

<b>A</b>	Do you have any information on the costs and benefits of existing consenting regimes? Those include the DNS, Harbour Revision or Empowerment Orders, consents to build and operate generating stations and overhead electric lines, Transport and Works Orders and Highways Orders.	Yes	No

Comments:  
**None of our members have responded on this point**

I am happy for my name/or address to be published with my response (please tick)

Consultation reference: WG34221

## **How to Respond**

**Please submit your comments in any of the following ways:**

### **Email**

Please complete the consultation form and send it to :

[planconsultations-g@wales.gsi.gov.uk](mailto:planconsultations-g@wales.gsi.gov.uk)

Please include 'Changes to the consenting of infrastructure – WG34221' in the subject line.

### **Post**

Please complete the consultation form and send it to:

**Changes to the consenting of infrastructure Consultation  
Planning Directorate  
Welsh Assembly Government  
Cathays Park  
Cardiff  
CF10 3NQ**

### **Additional information**

If you have any queries on this consultation, please:

email: [planconsultations-g@wales.gsi.gov.uk](mailto:planconsultations-g@wales.gsi.gov.uk) ; or

telephone: Lewis Thomas on 03000 25 3201