

Explanatory Memorandum to:

- **The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024**
- **The Developments of National Significance (Wales) (Amendment) Regulations 2024**

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024 and the Developments of National Significance (Wales) (Amendment) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Cabinet Secretary for Economy, Energy and Planning
02 December 2024

PART 1

1. Description

- 1.1 This Explanatory Memorandum (“EM”) provides information covering two related pieces of subordinate legislation which are made under powers in the Town and Country Planning Act 1990 (“the 1990 Act”).
- 1.2 Section 62D of the 1990 Act provides that applications for planning permission for a development of national significance (DNS) are to be made to the Welsh Ministers instead of to a local planning authority (LPA).
- 1.3 The Developments of National Significance (Wales) (Amendment) Regulations 2024 amend the Developments of National Significance (Wales) Regulations 2016 to prescribe functions in relation to determination of DNS applications for electricity generating projects below 50MW¹ that are to be exercised by an appointed person instead of the Welsh Ministers.
- 1.4 The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024 amend the Developments of National Significance (Fees) (Wales) Regulations 2016 to provide that the fee for the Welsh Ministers determining applications for electricity generating projects below 50MW is only payable where the application is determined by the Welsh Ministers, instead of an appointed person, as a result of a direction under paragraph 9 of Schedule 4D to the 1990 Act.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 In response to the Legislation, Justice and Constitution Committee's report² on the Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024, the Developments of National Significance (Wales) (Amendment) Regulations 2024 have been laid earlier than originally intended. It is the intention that both sets of Regulations will be come into force on 6 January 2025.
- 2.2 The amendment made by the Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024 is consequential on the Developments of National Significance (Wales) (Amendment) Regulations 2024. It would not be possible to interpret the regulatory impacts made by each statutory instrument in isolation without explaining the wider legislative context. Hence, a composite Explanatory Memorandum has been prepared to describe these statutory instruments.

¹ DNS Applications for planning permission for the construction, alteration or extension of an electricity generating station or an onshore wind generating station, where the generating capacity, or the increase in generating capacity, is expected to be below 50 megawatts

² <https://business.senedd.wales/documents/s155788/LJC6-35-24%20-%20Paper%201%20-%20Draft%20report.pdf>

3. Legislative background

The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024

- 3.1 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 303(1B)(a) and (5) and 333(2A) of the 1990 Act.
- 3.2 In accordance with section 333(3E) of the 1990 Act these Regulations are subject to approval of the Senedd under the affirmative procedure.

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- 3.3 These Regulations are made in exercise of the powers conferred on the Welsh Ministers by paragraph 1 of Schedule 4D to, and section 333(2A) and (2B) of, the 1990 Act.
- 3.4 These Regulations are subject to the negative procedure.

4. Purpose and intended effect of the legislation

Background

- 4.1 As set out at paragraph 1.2 above, applications for planning permission for DNS must be made directly to the Welsh Ministers, rather than to LPAs. DNS applications are of the greatest significance to Wales in terms of their potential impacts. The construction of electricity generating stations between 10 and 350MW, and of onshore wind generating stations of 10MW or above (with no upper limit), are categorised as DNS. The extension or alteration of such generating stations, where the effect of the extension or alteration is expected to increase the generating capacity by 10MW or above, is also categorised as DNS. In the case of an extension or alteration of a generating station (other than an onshore wind generating station) the effect of the extension or alteration must not increase the overall generating capacity beyond 350MW.
- 4.2 The Infrastructure (Wales) Act 2024 (the 2024 Act) received Royal Assent on 3 June 2024. It legislates for a single unified consenting regime for significant infrastructure projects (SIPs) in Wales, both on and offshore and will replace the DNS system. The circumstances in which electricity generating projects will be a SIP are similar to the circumstances in which such projects are categorised as DNS. However, the lower threshold will be 50MW instead of 10MW. Therefore, the construction of a generating station, or an onshore wind generating station, of less than 50MW will not usually be a SIP, likewise the alteration or extension of such generating stations by less than 50MW will not usually be a SIP. Once the 2024 Act is in force applications for planning permission for construction, alteration or

extension of electricity generating stations, where the generating capacity, or the increase in generating capacity, is expected to be below 50MW (electricity generating projects below 50MW) will usually be made to an LPA.

The Developments of National Significance (Wales) (Amendment) Regulations 2024

- 4.3 The amendments made by these Regulations have the purpose of expediting the determination of DNS applications for electricity generating projects below 50MW.
- 4.4 Expedited decisions will: provide greater certainty over the development consented as decisions will be made sooner; increase energy supply, addressing the net zero targets; and improve business efficiency and enhance economic activity through encouraging investment.
- 4.5 The DNS process has a maximum timeframe of 36 weeks. The current position is DNS applications (other than applications for the installation of overhead electric lines) are determined by the Welsh Ministers following submission of an Inspector's report. Determination of an application by the Welsh Ministers following receipt of an Inspector's report can make up 12 weeks of the 36 week determination period for a DNS project.
- 4.6 As a result of advancements in technology decreasing the scale and impact of infrastructure, and a greater understanding of the effect of these projects, electricity generating projects below 50MW will not automatically be SIPs under the 2024 Act. It is, therefore, considered that DNS applications for electricity generating projects below 50MW are generally suitable for determination by a person appointed by the Welsh Ministers, which will expedite determination of such applications.
- 4.7 The effect of these Regulations will be that functions in relation to the determination of DNS applications for electricity generating projects below 50MW will be exercised by an appointed person (in practice an Inspector from Planning and Environment Decisions Wales (PEDW)) instead of the Welsh Ministers. The Welsh Ministers will retain the power under Paragraph 9 of Schedule 4D to the 1990 Act to direct that these functions are to be exercised by them.

The Developments of National Significance (Fees) (Wales) (Amendment) Regulations 2024

- 4.8 These Regulations make a consequential change to the Developments of National Significance (Fees) (Wales) Regulations 2016 to remove the requirement to pay a fee to the Welsh Ministers for determining an application, where the application is not determined by them. This is in accordance with public finance principles.

5. Consultation

5.1 The Regulations were not subject to formal consultation. This is because:

- they will have limited impact on applicants, and other stakeholders in the consenting process (the considerations to be taken into account in making a decision will not change, the procedure will remain largely the same, and the Welsh Ministers will retain the ability to direct that specific applications are to be determined by them);
- the principle of the Welsh Ministers not making decisions in relation to electricity generating projects below 50MW was tested through the 2024 Act;
- the change is time limited as the DNS system will be replaced when the 2024 Act comes into force;
- it is in the interests of applicants, the pursuit of Welsh Government objectives, and the wider public to expedite decisions as soon as possible as expedited decisions will: provide greater certainty over the development consented as decisions will be made sooner; increase energy supply, addressing the net zero targets; and improve business efficiency and enhance economic activity through encouraging investment.

6. Regulatory Impact Assessment (RIA)

Options

6.1 The following options are considered:

Option 1: Do nothing – No legislation is brought forward, and therefore no changes are made to the determination procedure for DNS applications.

Option 2: Make the legislation – Remove the requirement for DNS applications for electricity generating projects below 50MW to be determined by the Welsh Ministers. Such applications will instead be determined by an Inspector from PEDW appointed by the Welsh Ministers.

6.2 Option 2 is the favoured option.

Justification for 2 options

6.3 A third option is not proposed as it is considered that there is not another reasonable way of achieving the policy intention.

7. Cost and Benefits Analysis

7.1 The sectors most likely to be affected by the proposals include:

- The Welsh Government
- PEDW
- Development Industry (i.e. those who submit applications for DNS)

- 7.2 The following cost and benefit analysis has been undertaken for each of the above sectors:

Option 1: Do nothing – No legislation is brought forward, and therefore no changes are made to the determination procedure for DNS applications.

Description:

- 7.3 The application process is set out in the Developments of National Significance (Procedure) (Wales) Order 2016, as amended. Broadly, once an application is accepted as valid, a five week representation period begins during which publicity and consultation will be carried out by PEDW. Following the end of this period an Inspector (from PEDW) is appointed and the examination begins. The examination can be in the form of written representations, a hearing, public inquiry or a combination of all three. The Inspector will examine the application and produce a report for the Welsh Ministers within 24 weeks.
- 7.4 Currently, after the examination has taken place, the Inspector will produce a recommendation report for the Welsh Ministers, recommending whether planning permission should be granted or refused. The Welsh Ministers have 12 weeks to make and publish the decision after receiving the Inspector's report and recommendation.
- 7.5 However, for overhead electric lines up to 132 KV related to devolved energy projects the Welsh Ministers do not make the decision. In this instance, after the examination has taken place, the Inspector will prepare a report and then makes the decision on behalf of the Welsh Ministers. This was introduced by the Developments of National Significance (Wales) (Amendment) Regulations 2019.
- 7.6 Under option 1, this existing procedure will be maintained.

Costs:

The Welsh Government:

- 7.7 The DNS regime is operated on a full 'cost recovery' basis, and so various stages of the process are associated with the payment of fees. This includes a fee for the Welsh Ministers determining the application (determination fee). The Developments of National Significance (Fees) (Wales) Regulations 2016 (as amended) sets out the full details.
- 7.8 Once the Welsh Government receive the report from the Inspector, the applicant will be invoiced a £14,700 determination fee. This is paid directly to Welsh Government to cover its determination costs.
- 7.9 By taking option 1, the Welsh Government will continue to invoice applicants for this fee prior to determining their DNS application, excluding those related to overhead lines referred to in paragraph 7.5 above.

PEDW:

- 7.10 The existing cost implications will be maintained as will the recovery of these costs.

Development Industry:

- 7.11 Applications for electricity generating projects below 50MW will continue to be treated as per other DNS applications and therefore incur a fee of £14,700 (see paragraph 7.8) for determination by the Welsh Ministers.
- 7.12 In addition, developers will continue to wait 12 weeks for a decision from the Welsh Ministers after the Inspector has produced their report and made their recommendation. The statutory determination period would continue to apply, that is, 36 weeks from the date of acceptance of the application. General pre-development costs, such as interest payments on any financing, administrative costs, legal fees etc, will continue to be incurred while awaiting the decision from the Welsh Ministers.

Benefits:

The Welsh Government:

- 7.13 There are no identifiable benefits to Welsh Government. With advancements in technology decreasing the scale and impact of infrastructure, electricity generating projects below 50MW no longer need to be determined by Welsh Ministers in most cases, this is different to the situation when the DNS procedure was introduced in 2016. Further, these projects will not usually be SIPs under the 2024 Act, which will replace DNS, for this reason. Once the new consenting framework is in place, these applications will usually be handled by LPAs.

PEDW:

- 7.14 There are no identifiable benefits to PEDW by maintaining the existing procedure for all types of DNS applications.

Development Industry:

- 7.15 There are no material benefits for the Development Industry by keeping the existing procedure for all types of DNS applications. Developers will continue to be required to pay the determination fee and wait the full statutory 36 weeks for determination.

Option 2: Make the legislation – Remove the requirement for DNS applications for electricity generating projects below 50MW to be determined by the Welsh Ministers. Such applications will instead be determined by an Inspector from PEDW appointed by the Welsh Ministers to examine the application.

Description:

- 7.16 As set out in paragraph 7.4, currently, after the examination has taken place, the Inspector will produce a recommendation report for the Welsh Ministers who then have 12 weeks to make and publish the decision.
- 7.17 Choosing option 2 would expedite decisions by amending the Developments of National Significance (Wales) Regulations 2016, to enable an appointed person to determine electricity generating projects below 50MW. In this context, applications are to be determined by an Inspector from PEDW upon completion of their examination of it. Amendments to the Developments of National Significance (Fees) (Wales) Regulations 2016 will mean that the determination fee will only be payable where such applications are determined by the Welsh Ministers.
- 7.18 The Welsh Ministers retain the power to recover DNS applications within this threshold for their determination should they consider it appropriate to do so.
- 7.19 A similar provision was made in the Developments of National Significance (Wales) (Amendment) Regulations 2019, which delegated determination of DNS decisions in relation to the installation of overhead electric lines (see paragraph 7.5).

Costs:

The Welsh Government:

- 7.20 There are no identifiable costs to the Welsh Government by taking option 2 and delegating the determination of applications for electricity generating projects below 50MW to PEDW. Whilst the Welsh Government will no longer receive fee income associated with taking such decisions (see paragraph 7.8), the Welsh Government will no longer be committing any resources to this process to warrant the payment of any fee.
- 7.21 Where the Welsh Ministers direct that an electricity generating project below 50MW is to be determined by them, they would receive the £14,700 determination fee to cover the costs they incur in undertaking this function.
- 7.22 The Welsh Treasury will not be impacted by this change.

PEDW:

- 7.23 The resources PEDW will need to commit to the examination and determination of an application are not expected to be any different under this option compared to Option 1. Upon completion of their final report PEDW will be required to publish the decision on the Welsh Government website and inform all interested parties of the decision. PEDW are

already required to notify interested parties within the examination process. In most cases, notification will be undertaken electronically and consist of sending an email to all interested persons. The additional cost of notification of the decision is de minimis and is therefore not costed on this basis. This cost will be subsumed into the overall costs incurred by PEDW and recovered through the existing fee to applicants.

Development Industry:

- 7.24 There will be a cost saving to the development industry under this option when compared to Option 1, as the overall fee charged for submitting DNS applications for electricity generating projects below 50MW will be lower. Under option 2, the determination fee paid to the Welsh Ministers for such applications will not be payable where the application is not determined by the Welsh Ministers, reducing the overall applicable application fee by £14,700.

Benefits:

The Welsh Government:

- 7.25 As of October 2024, there were 18 DNS applications with PEDW. Of these, 11 are applications for electricity generating projects below 50MW. The number of DNS applications submitted has increased each year, however an increase in number prior to the introduction of the 2024 Act is not considered to affect the policy benefits identified.
- 7.26 The ability for the Welsh Ministers to transfer responsibility for determining these applications to an Inspector will mean the Welsh Ministers can use the resources saved from determining these applications to carry out the necessary work to determine more complex and controversial applications.
- 7.27 The Welsh Ministers will retain the power to recover such applications on a case-by-case basis should they consider it appropriate to do so.
- 7.28 Speeding up the decision-making process for such applications will have an important role in helping to deliver sustainable infrastructure and 'green' growth, contributing towards meeting our commitments in terms of carbon emissions and environmental protection. Increasing green energy supply nationally, through the faster construction of new infrastructure, supports our net zero objectives and could also benefit the construction industry, create jobs, and contribute towards making energy greener and more affordable. Faster development approvals could encourage investment in infrastructure projects of this scale, stimulating economic growth and job creation across various sectors.

PEDW:

7.29 Option 2 will enable PEDW to streamline the decision-making processes for the specified application types. The internal procedures that are followed when preparing a recommendation report to be sent to the Welsh Ministers will no longer be required for applications for electricity generating projects below 50MW.

7.30 Inspectors will take ownership of the application process from start to finish.

Development Industry:

7.31 There are two key benefits for the development industry – firstly costs savings as set out in paragraph 7.8, and secondly, speedier decisions and the indirect benefits achieved as a result.

7.32 The development industry is expected to experience a reduction in baseline costs for DNS applications related to electricity generating projects below 50MW. The elimination of the determination fee will result in a £14,700 saving. While the costs associated with the application's review and decision-making process might see a difference to account for PEDW's administrative expenses, this increase is anticipated to be de minimis.

7.33 At present, there is a statutory requirement for all DNS projects to be determined within a 36 week period. However, by allowing Inspectors to determine applications for electricity generating projects below 50MW, this can reduce the existing timeframe by 12 weeks, providing timelier decisions to developers. Faster planning decisions will improve business efficiency through reducing delays and limiting financing costs. Option 2 will also provide greater certainty in the energy sector as decisions will be made sooner.

8. Summary of the preferred option

8.1 Option 2 is the preferred option.

8.2 This legislative amendment to the current consenting process is a cost-saving measure that will help expedite the implementation of crucial green energy projects, meeting government priorities in delivering sustainable infrastructure and green growth as outlined in the Welsh Government priorities set out on 17 September: <https://www.gov.wales/oral-statement-government-priorities>.

8.3 It is in the interests of applicants, the pursuit of Welsh Government objectives and the wider public to expedite decisions for energy projects as soon as possible as expedited decisions reduce costs of delivering such infrastructure projects, providing greater certainty to the energy sector which in turn can stimulate economic growth and job creation in a nationally important sector.

- 8.4 Perusing option 2 allows for the broad benefits set out above to be achieved, i.e. cost savings and expedited decision-making, with no notable negative impacts. The Welsh Ministers will also retain the ability to direct that applications for electricity generating projects below 50MW be determined by them, providing a safeguard should ministerial intervention be required on a case-by-case basis.

9. Competition Assessment

- 9.1 A competition filter test has been applied to the proposed amendments. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh business.

10. Post implementation review

- 10.1 The Welsh Government will be able to monitor the impact the procedural change has on the overall timetable for the delivery of infrastructure projects.
- 10.2 Dialogue will remain open with developers and PEDW, enabling discussion regarding any issues or concerns with the arrangements introduced by this legislative amendment.
- 10.3 Members of the Senedd and the general public will also be able to assess the effectiveness of the new arrangements through correspondence and any questions to the Cabinet Secretary in the Senedd.