

# The Planning Series

## 14 – Developments of National Significance

September 2022



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**Welsh Parliament**

**Tŷ Hywel**

**Cardiff Bay**

**CF99 1SN**

**Tel: 0300 200 7536**

**Email: [Francesca.Howorth@senedd.wales](mailto:Francesca.Howorth@senedd.wales)**

**Twitter: [@SeneddResearch](#)**

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# The Planning Series

## 14 – Developments of National Significance

September 2022

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**Author:**

Francesca Howorth

**Paper overview:**

Developments of National Significance (DNS) are large infrastructure development projects of national importance. The majority of planning applications for DNS are decided by the Welsh Ministers.

This briefing provides an overview of what DNS are, the process of consenting for them and how communities are involved in the DNS process.



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# 1. What are Developments of National Significance

The **Planning (Wales) Act 2015** introduced a new category of **Developments of National Significance** (DNS) in Wales. A DNS is a type of planning application for large infrastructure projects (where consenting is devolved) decided by the Welsh Ministers, rather than local planning authorities (LPAs). Larger projects, where consenting is not devolved, are decided by the UK Government through the **Nationally Significant Infrastructure Projects (NSIP) process**. NSIPs require a different kind of consent called a Development Consent Order (DCO), which is given under the **Planning Act 2008**.

DNS projects are of national importance and include airports, railways, gas storage facilities and energy generation stations. This is subject to specific thresholds set out in **Regulations**. A full list of DNS projects can be found in the appendix.

The Welsh Government publishes a **register of all DNS applications** which includes both those currently in progress and those that have already been decided.

## The application process

The DNS application process is managed by **Planning and Environment Decisions Wales (PEDW)**, formerly the Planning Inspectorate Wales, on behalf of the Welsh Government. Decisions are made in the context of the **National Development Framework (NDF)** (see below) and the LPA's local development plan. More detail on the process can be found in section 2 of this guide.

## National planning policy

The NDF, which is entitled Future Wales: the National Plan 2040, sets out a 20 year land use framework and has development plan status. This means planning decisions must be made in accordance with it and **strategic and local developments plans** must be in conformity with it, unless material considerations indicate otherwise.

The NDF acts as the national development plan against which DNS applications are determined and must be reviewed every five years. The first iteration was published in 2021 and contains specific spatial policies relating to renewable and low carbon energy DNS (see policy 18 of the NDF).

The DNS policies included in the NDF focus on renewable and low carbon energy as it is anticipated these will be the most common schemes coming forward. Future iterations will contain additional policies for other types of DNS.

Sitting alongside the NDF, the Welsh Government's national planning policies are set out in **Planning Policy Wales (PPW)**. Policies contained in PPW act as a material consideration in determining DNS applications.

## Recent and future changes

### The Wales Act 2017

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Following the introduction of the DNS regime, the **Wales Act 2017** (the Act) devolved some further consenting powers to the Welsh Government.

This included powers, which came into force in April 2019, relating to energy generating stations. Consenting powers for stations with a capacity of up to and including 350 megawatts (MW) onshore and in Welsh waters (which is an inshore area out to approximately 12 nautical miles from Welsh shores) are now devolved. Consenting for onshore projects has now been brought under the DNS regime while consenting in Welsh waters is currently given under other regimes.

Previously, consent for capacity over 50MW was reserved to the UK Government. Consent for capacity over 350MW still remains with the UK Government while consent for under 10MW is dealt with by LPAs.

The Act also devolved consenting powers in relation to overhead electric lines of up to and including 132 Kilovolts (KV) that are associated with a devolved energy generating project. Applications for these projects are now dealt with under the DNS regime, however unlike most DNS applications, they are determined by an Inspector appointed by PEDW, as opposed to the Welsh Ministers.

### An Infrastructure Consenting Bill

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The way in which these additional consenting powers were devolved through the Act has created some anomalies which the Welsh Government wants to address. Senedd Research has [published an article](#) which sets out the detail on these issues.

The Welsh Government intends to establish a new one-stop shop consenting process that is bespoke to Wales and will replace the existing consenting route for planning permission for DNS.

The consent would be called Welsh Infrastructure Consent (WIC) and projects captured by it would be called Welsh Infrastructure Projects (WIPs).

In his **July 2022 legislative statement** the First Minister set out the Welsh Government's intention to introduce an Infrastructure Consenting Bill in the coming year.

## 2. What is the application process for DNS?

The application process is defined by the **Developments of National Significance (Procedure) (Wales) Order 2016**, as amended, and subsequent **Regulations**.

The Welsh Government has issued a **suite of guidance** on the application process which is comprised of four main stages. The process is designed to be 'front-loaded', so that as many issues as possible are resolved before the application is submitted to PEDW.

### **Stage 1: Pre-Application**

At the first statutory stage of the process, a prospective applicant must submit a notification of a proposed application, which PEDW must accept or not accept within ten working days. However applicants are strongly encouraged to engage with stakeholders such as the LPA and affected communities before notification and formal consultation processes begin to identify any issues.

If the notification is accepted by PEDW, the applicant has twelve months to submit the application. During these twelve months, the applicant must undertake a formal pre-application process as outlined below.

At this stage applicants can also apply for pre-application advice from PEDW, and from the LPA. Advice could include guidance on the form and content of the application and technical reports, relevant planning policy, **planning obligations** (Section 106 agreements), statutory requirements, and identification of consultees.

### **Formal pre-application consultation**

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Applicants must conduct a formal pre-application consultation lasting at least six weeks, during which they must publicise the project. Applicants must serve written notice to owners or occupiers of land adjoining the site, display site notices, and place a notice in a local newspaper as minimum requirements but it is expected most projects will exceed these. Consultees will include community consultees

(including community councils and councillors from all electoral wards that the project site is within), specialist consultees, and the authorities involved in any secondary consents.

The applicant must produce a **pre-application consultation report** which must be submitted with the planning application.

## **Stage 2: Submission of an application**

As outlined the applicant has twelve months after notification to submit an application to PEDW. The application must include a **number of documents**, including a copy of the pre-application consultation report.

Once submitted applications cannot undergo any major changes, highlighting the importance of the pre-application stage.

After submission, PEDW has 28 days, or 42 days in the case of applications which require an Environmental Impact Assessment, to decide whether the application is valid.

## **Consultation and publicity (the representation period)**

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Once an application is accepted as valid, PEDW gives written notification to the applicant, and initiates a representation period which typically lasts five weeks, during which publicity and consultation will be carried out by PEDW.

All consultation responses ("representations") must be received within this five week time frame. The relevant LPA(s) for the area(s) to which the application relates must also produce a local impact report and submit this to PEDW within the five weeks.

During this period, certain specialist consultees and community councils will be contacted by PEDW in relation to the application. They must respond within the five week period making a 'substantive response' or confirming that no comments will be made. These deadlines can be extended if both parties agree.

There is no requirement on PEDW to contact other parties who made comments during the pre-application stage although anyone is able to make representations to PEDW if they wish.

Following the end of the five week period, the applicant has ten days to make any minor variations to the application. If the proposed variation is agreed by PEDW then the process is suspended and the applicant has 28 days to submit amended

documents. If PEDW does not agree then the application will continue to be examined as it was originally submitted.

### **Stage 3: Examination**

At this stage an Inspector appointed to the application by PEDW will examine the application and produce a report for the Welsh Ministers. This report will include a recommendation on whether planning permission should be refused or granted. It may also include planning conditions that the Inspector considers should be imposed if permission is to be granted.

The examination can be in the form of written representations, a hearing, public inquiry or a combination of all three.

### **Timeframes**

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The Welsh Ministers must make a decision on a DNS application 36 weeks from the date of an application being validated (see stage 2). In order to meet this timescale, PEDW must deliver its report to the Welsh Ministers within 24 weeks, leaving the Welsh Ministers twelve weeks to consider the report and issue a decision.

Taking into account the five week representation period, followed by the ten day period for applicants to decide whether to vary an application (see stage 2), this leaves 17 weeks available to PEDW for the examination period.

If the examination requires a hearing it must be held within ten weeks of the end of the representation period. If an inquiry is necessary, this must be held within 13 weeks of the end of the representation period. A hearing is less formal than an inquiry which is only held where there are complex or technical issues to address.

A hearing or inquiry will only focus on certain main issues determined by the Inspector. Other matters are dealt with through written representations. The Welsh Government has **issued guidance** which provides more detail on hearings and inquiries.

### **Stage 4: Decision**

The Welsh Ministers have twelve weeks from receipt of the Inspector's report to issue a decision letter on the DNS application and any associated secondary consents. The Welsh Ministers do not have to agree with the Inspector's recommendation.

When made, the decision and the associated Inspector's report will be published on the [Welsh Government's website](#).

### 3. How can local communities participate in the process?

There are three main stages at which communities can have their say on a DNS:

- pre-application notification (voluntary on part of the applicant/developer, but strongly encouraged as a central part of the process);
- formal pre-application consultation (lasts six weeks and is mandatory); and
- post-submission representation period (lasts five weeks and is mandatory).

The greatest opportunity to influence a DNS project occurs during the voluntary pre-notification phase, by attending events and meetings or talking to the applicant. However this stage is voluntary on part of the applicant.

Formal comments or objections (“representations”) can also be made during the mandatory pre-application and main representation phases.

During the pre-application consultation stage, communities are able to make comments/ objections to the applicant. Following this, if the objectors are not happy with how their comments have been addressed, or still wish to object, they can do so during the post-submission representation period. At this stage written representations are made to the Inspector.

If the Inspector determines that a hearing or inquiry is required, the public are able to attend. However, only those specifically invited to speak by the Inspector are able to formally participate in the process. The hearing/ inquiry will focus on a ‘main’ issue in question and only objections relating to this main issue will be heard.

The Welsh Government has produced a [guide for communities](#) which provides more information on how to engage with the DNS process.

## 4. Can a DNS decision be challenged?

There is no right of appeal against the decision of the Welsh Ministers to grant or refuse planning permission for a DNS. A decision may only be challenged through judicial review on the grounds of either illegality, irrationality or procedural impropriety. Such a challenge must be logged within six weeks of the decision.

If permission is granted LPAs are responsible for ensuring development is in accordance with the planning permission. The LPA should monitor implementation and ensure it complies with the plans and any attached conditions. The LPA has the power to take **enforcement action** if it considers that the development does not comply.

## 5. Key Sources

### Welsh Government

The Welsh Government has published a **suite of guidance** relating to the DNS process.

It also maintains a **register of DNS applications**.

### Planning Aid Wales

**Planning Aid Wales** is a charity helping eligible individuals and communities to participate more effectively in the planning system. It provides advisory services, including a helpline and these **guidance publications**.

### Senedd Research

Other planning briefings produced by Senedd Research are available under the **planning category** on the **Senedd Research website**.

## 6. Appendix – list of DNS categories

Type of development	Size/ capacity threshold
<b>Construction, extension or alteration of an electricity generating station (other than an onshore wind generating station)</b>	Expected to have capacity (or increase of capacity) of 10 – 350 megawatts
<b>Construction, extension or alteration of an onshore wind electricity generating station</b>	Expected to have an installed generating capacity of 10 megawatts or above
<b>Installation of an overhead electric line</b>	Up to and including 132 kilovolts associated with the construction or extension of a devolved energy generating station granted planning permission or consented to on or after 1 April 2019
<b>Development relating to underground gas storage facilities</b>	Working capacity (or increase in capacity) of at least 43 million standard cubic metres and/or maximum flow rate (or increase in maximum flow rate) of at least 4.5 million standard cubic metres per day
<b>Construction or alteration of a Liquefied Natural Gas facility</b>	
<b>Construction or alteration of a gas reception facility</b>	
<b>Airport-related development</b>	Air passenger transport services for at least one million passengers per year, or air cargo transport services for at least 5,000 air transport movements of cargo aircraft per year
<b>Construction or alteration of a railway</b>	A stretch of track of more than two kilometres in continuous length, wholly or partly in Wales and part of a network operated by an approved operator
<b>Construction or alteration of a rail freight interchange (including warehouses) but not if part of a military establishment</b>	Capable of handling consignments from more than one consignor to more than one consignee, and handling at least two goods trains per day

<b>Construction or alteration of a dam or reservoir</b>	Volume of water to be held back by the dam or stored in the reservoir expected to exceed 10 million cubic metres
<b>Development relating to the transfer of water resources</b>	Volume of water to be transferred as a result of the development is expected to exceed 100 million cubic metres per year
<b>Construction or alteration of a waste water treatment plant or of infrastructure for the transfer or storage of waste water</b>	Expected to have a capacity exceeding a population equivalent of 500,000, or infrastructure for waste water storage exceeding 350,000 cubic metres
<b>Construction or alteration of a hazardous waste facility</b>	In the case of hazardous waste disposal by landfill or deep storage, more than 100,000 tonnes per year; in any other case, more than 30,000 tonnes per year