



National Assembly for **Wales**
Cynulliad Cenedlaethol **Cymru**

Planning Bill

This paper provides background briefing on the UK Government's Planning Bill and its implications for Wales.

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Planning Bill

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Executive Summary

The Planning Bill received its **First Reading** in the House of Commons on 27 November 2007¹. The Welsh Minister for Environment, Sustainability and Housing issued a written **Cabinet Statement** on the Bill on 14 December 2007².

According to the UK Government, the purpose of the Bill is to streamline and improve the planning regime, including an independent **Infrastructure Planning Commission (IPC)** to consider applications for “nationally significant” infrastructure projects in the fields of energy, transport, water, waste water and waste. It also introduces a Community Infrastructure Levy and further measures to improve the Town and Country Planning System in England.

In Wales the IPC will only take decisions about nationally significant projects where responsibility is not already devolved to Welsh Ministers. These are **major energy projects** and some types of harbour facilities.

In making its decisions, a primary consideration for the IPC will be **National Policy Statements** produced by the Secretary of State. The Secretary of State has a duty to consult on these statements but the Welsh Ministers are not statutory consultees.

There are a number of other changes being made to the **Town and Country Planning regime** in England. Some of these changes also apply in Wales but Welsh Ministers will be able to decide when they should commence. For the remaining changes, the Welsh Assembly Government says that they will be introduced at the Parliamentary Committee stage of the Bill but will not be implemented in Wales until consultation has taken place.

The Bill includes a new duty for local planning authorities in England in preparing their local plans to take action on **climate change**. No such duty is being imposed on planning authorities in Wales.

The Bill was announced as including new **framework powers** relating to local development plans and the Wales Spatial Plan. However these do not appear on the face of the Bill. The Welsh Assembly Government says that they will also be introduced at the Parliamentary Committee stage.

¹ The Planning Bill, Bill 11, 2007-08 <http://services.parliament.uk/bills/2007-08/planning.html>

² Welsh Assembly Government, Jane Davidson AM, Minister For Environment, Sustainability and Housing, *Planning Bill*, Cabinet Written Statement, 14 December 2007
<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/071214planning/?lang=en>

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Planning Bill

1 Introduction

The Planning Bill received its First Reading in the House of Commons on 27 November 2007³. The Welsh Minister for Environment, Sustainability and Housing issued a written Cabinet Statement on the Bill on 14 December 2007⁴.

According to the UK Government, the purpose of the Bill is to implement proposals in the May 2007 Planning White Paper, *Planning for a Sustainable Future*⁵ to streamline and improve the planning regime, including an independent **Infrastructure Planning Commission** (IPC) to consider applications for “nationally significant” infrastructure projects, the introduction of a Community Infrastructure Levy and further measures to improve the Town and Country Planning System in England.

The Planning White Paper set out detailed proposals for reform of the planning system, building on Kate Barker's recommendations for improving speed, responsiveness and efficiency in land use planning⁶, and taking forward Kate Barker's and Sir Rod Eddington's proposals for reform of major infrastructure planning⁷.

The IPC will take decisions about nationally significant infrastructure projects in England. In Wales it will only take decisions about nationally significant projects where responsibility is not already devolved to Welsh Ministers including **major energy projects** such as onshore energy projects generating more than 50 megawatts and offshore projects exceeding 100 megawatts.

Under the new procedures, the UK Government would issue a **national policy statement** in the relevant policy area, after public consultation and Parliamentary scrutiny. In making its decisions, a primary consideration for the IPC will be these policy statements produced by the Secretary of State. The Secretary of State has a duty to consult on these statements.

There are a number of other changes being made to the **Town and Country Planning regime** in England. Some of these changes also apply in Wales but Welsh Ministers will be able to decide when they should commence. For the remaining changes, the Welsh Assembly Government says that they will be introduced at the Parliamentary Committee stage of the Bill but will not be implemented in Wales until consultation has taken place.

The Bill was announced as including new **framework powers** relating to local development plans and the Wales Spatial Plan. However these do not appear on the face of the Bill. The Welsh Assembly Government says that they will also be introduced at the Parliamentary Committee stage.

³ The Planning Bill, Bill 11, 2007-08 <http://services.parliament.uk/bills/2007-08/planning.html>

⁴ Welsh Assembly Government, Jane Davidson AM, Minister For Environment, Sustainability and Housing, *Planning Bill*, Cabinet Written Statement, 14 December 2007

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/071214planning/?lang=en>

⁵ *Planning for a Sustainable Future*, White Paper, May 2007:

<http://www.communities.gov.uk/publications/planningandbuilding/planningsustainablefuture>

⁶ Kate Barker, *Barker Review of Land Use Planning Final Report*, 6 December 2006

[\[treasury.gov.uk/independent_reviews/barker_review_land_use_planning/barkerreview_land_use_planning_index.cfm\]\(http://www.hm-treasury.gov.uk/independent_reviews/barker_review_land_use_planning/barkerreview_land_use_planning_index.cfm\)](http://www.hm-</p></div><div data-bbox=)

⁷ Sir Rod Eddington, *The Eddington Transport Study The case for action: Sir Rod Eddington's advice to Government*, December 2006

<http://www.dft.gov.uk/162259/187604/206711/executivesummary>

2 The Infrastructure Planning Commission

Parts 1 to 8 of the Bill create a new system of development consent for “**nationally significant**” infrastructure projects. The new system covers certain types of energy, transport, water, waste water and waste projects. The intention is to reduce the number of applications and permits required for such projects, compared with the position under current legislation.

A major role in the new system is to be played by a new independent body to be called the **Infrastructure Planning Commission (IPC)**. The IPC will be responsible for examining applications for development consent for nationally significant infrastructure projects. The IPC will also be responsible for deciding any such application when there is in force a relevant **national policy statement**.

In Wales the IPC will only take decisions about nationally significant projects where responsibility is not already devolved to Welsh Ministers. These are **major energy projects** such as higher capacity electricity lines above ground, pipelines, underground gas storage, onshore energy projects generating more than 50 megawatts and offshore projects exceeding 100 megawatts. It also includes some types of harbour facilities.

The Welsh Assembly Government has stated that “they consider it anomalous that the decision-making power for major electricity generating station projects located in Wales remains a function which is reserved to the UK Government and will eventually pass to the IPC”. The Welsh Assembly Government “is continuing to press this point with the UK Government⁸”.

The Secretary of State may designate a national policy statement for the purposes of the Bill only if there has been public consultation. The Secretary of State has a **duty to consult** on these statements although **the Welsh Ministers are not statutory consultees**.

The Secretary of State will have a wide discretion as to how prescriptive the policy should be.

According to the Cabinet Statement on the Bill from the Minister for Environment, Sustainability and Housing:

“The statements will be subject to public consultation and Parliamentary scrutiny. We have been assured that there will also be appropriate consultation with the Welsh Assembly Government.”⁹

Also:

“[...] we want to ensure that the current status of Welsh policy in the areas in which the IPC will be taking decisions is adequately respected”¹⁰

⁸ Welsh Assembly Government, Jane Davidson AM, Minister For Environment, Sustainability and Housing, *Planning Bill*, Cabinet Written Statement, 14 December 2007

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/071214planning/?lang=en>

⁹ *ibid*

¹⁰ *ibid*

If the national policy statement refers to particular locations then the Secretary of State must consult the local authority in which the land is located and also adjoining local authorities.

Applications for development consent would be decided by the IPC, assessed against the relevant national policy statement. A panel of experts would hear the evidence as well as taking the final decision. There would be no right of appeal against the decision of the IPC, except by judicial review in the High Court. The procedures would cover projects in the fields of energy, transport, water, waste water and waste.

The IPC will have to **appoint Panels** comprised of three or more Commissioners, or a single Commissioner, to examine the applications submitted to it. For applications that relate to land in Wales, the Chair of the panel will if reasonably practicable, ensure that at least one of the members is a Commissioner nominated by Welsh Ministers. The Bill sets out the procedures for examination of an application. It is intended that in examining applications greater use is made of written representations with less reliance on oral representations.

3 Changes to the Town and Country Planning regime

Part 9 of the Bill makes various **alterations** to the existing **Town and Country Planning regime** (which will continue to apply to all other types of development).

Welsh Ministers have devolved responsibility for town and country planning policy and decision-making. The Welsh Assembly Government has said that it intends to publish a **Position Statement** which outlines its vision for the future of the land use planning system in Wales. This will address many of the proposed changes in the Planning White Paper and in the Bill that are intended for England¹¹.

Some of the changes in part 9 will apply to both England and Wales with Welsh Ministers being given commencement powers to decide when these reforms will take effect. Others apply to England only. The Minister for Environment, Sustainability and Housing has said that some of these provisions will be brought forward at the Parliamentary Committee stage of the Bill in such a way that will enable Welsh Ministers to take them forward at their discretion and subject to the outcome of consultations in Wales¹².

Changes are being made in relation to the **development plan**. Clause 147 places a duty on local planning authorities in England when preparing their development plan documents to include policies which take action on **mitigating and adapting to climate change**. There is **no similar clause for Wales**.

The only clause relating to the development plan in Wales is clause 149. This introduces a power for the **High Court to refer a development plan** that has been challenged back to a **specified point** to avoid the need to start the plan afresh.

The other changes that are being introduced are as follows:

- Local planning authorities will be required to make arrangements for decisions **on certain planning applications to be taken by planning officers**, with a right of

¹¹ Welsh Assembly Government, Decision Report, *Response to the Planning White Paper*, 4 October 2007
<http://new.wales.gov.uk/publications/accessinfo/decisionreport/DRenviro/1707336/?lang=en>

¹² Welsh Assembly Government, Jane Davidson AM, Minister For Environment, Sustainability and Housing, *Planning Bill*, Cabinet Written Statement, 14 December 2007
<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/071214planning/?lang=en>

review by the authority (rather than an appeal to the Secretary of State). (Clauses 150 to 153: **England only**, but according to the Welsh Assembly Government to be brought forward at the Parliamentary Committee stage for Wales).

- Changes are being made to the power of local planning authorities to **decline to determine subsequent applications** if they are the same or substantially the same as previous applications that have been refused. (Clause 154: **England and Wales**, but to be commenced in Wales by the Welsh Ministers).
- The **right to compensation** is being **removed** where at least 12 months' notice is given of withdrawal of planning permission by a development order. (Clause 155: **England only**)
- Authorities are being given express power to make **non-material changes** to planning permissions. (Clause 156: **England only**)
- Amendment of the **tree preservation order provisions** of the *Town and Country Planning Act 1990*. In short, it provides for the transfer of provisions from tree preservation orders into regulations. (Clauses 157, 158 and Schedule 3: **England and Wales** but to be commenced in Wales by the Welsh Ministers)
- Authorisation for a local planning authority to **override easements** and other rights restricting the use of land which it has acquired or appropriated for planning purposes. (Clause 159: **England only**)
- The Secretary of State is to be required to **determine the appropriate procedure for appeals** (that is, local inquiry, hearing or written representations). (Clause 160: **England only**, but according to the Welsh Assembly Government to be brought forward at the Parliamentary Committee stage for Wales).
- Provisions are included concerning **fees for planning applications** and a power is created to enable **fees to be imposed** in connection with **planning appeals**. (Clauses 161 and 162: **England and Wales** but to be commenced in Wales by the Welsh Ministers).

The Minister has said that a Wales-only provision relating to blighted land will also be tabled at the Parliamentary Committee stage. This will ensure that **blight notice procedures** apply to land identified in all existing development plans in Wales¹³. Clauses 144 and 145 deal with blighted land affected by a National Policy Statement and apply to England and Wales.

4 The Community Infrastructure Levy

Part 10 makes provision for a **Community Infrastructure Levy** (CIL). The Secretary of State is to be given the power to make regulations providing for the imposition of this new levy. The value of land may increase when planning permission is granted for development. The aim of the levy is to ensure that costs incurred in providing infrastructure to support the development of an area can be met, either in part or whole, by land owners who have benefitted in this way.

¹³ Welsh Assembly Government, Jane Davidson AM, Minister For Environment, Sustainability and Housing, *Planning Bill*, Cabinet Written Statement, 14 December 2007
<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/071214planning/?lang=en>



The Bill will therefore allow local councils to set charges on new developments in their areas to contribute to community infrastructure like roads, schools and hospitals. The revenue raised through the CIL will be collected locally rather than centrally as previously proposed. Welsh Ministers and Local Planning Authorities in Wales could be empowered to charge the levy.

According to the Minister for Environment, Sustainability and Housing:

“The ability for local planning authorities to charge the levy would be linked to the content of the development plan. The Welsh Ministers may also be empowered to charge the levy given their devolved infrastructure responsibilities. However, as the levy is in the nature of a tax, it is considered inappropriate for control of the scope and operation of the levy to be devolved.”¹⁴

The regulations to be made by the Secretary of State must be approved by the House of Commons.

The current system that operates in England and Wales - called Section 106¹⁵ agreements or planning obligations - has gradually evolved over time but still has important constraints that limit its ability to ensure that all development makes an appropriate contribution towards the new infrastructure needed. For instance, a link between the development and the contribution sought must be demonstrated, and each agreement is a legal contract which can take some time to agree. The new regulations to be made by the Secretary of State may also include guidance on the use of Section 106 agreements in relation to the new CIL.

Section 48 of the *Planning and Compulsory Purchase Act 2004* gives Welsh Ministers the power to make regulations which will enable planning contributions to be made in relation to the development or use of land whilst Sections 46 and 47 of the 2004 Act give a similar power to the Secretary of State in England. Sections 46 to 48 have not come into force yet.

The Welsh Assembly Government consulted in 2004 on proposals for amending the planning obligations system in Wales, based on the proposals developed at that time by the Office of the Deputy Prime Minister for England¹⁶.

The UK Government also consulted in 2006 on introducing a planning-gain supplement, in England which would be a tax on the increase in land value resulting from the granting of planning permission, as a partial replacement for the planning obligations system¹⁷. However in the Pre-Budget Report of 9 October 2007, the Government deferred its proposals to introduce a Bill establishing the planning-gain supplement, deciding instead to introduce the CIL:

“Following discussions with key stakeholders, the Government will legislate in the Planning Reform Bill to empower Local Planning Authorities in England to apply new planning charges to new development, alongside negotiated contributions for

¹⁴ Welsh Assembly Government, Jane Davidson AM, Minister For Environment, Sustainability and Housing, *Planning Bill*, Cabinet Written Statement, 14 December 2007

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/071214planning/?lang=en>

¹⁵ Section 106 of the *Town and Country Planning Act 1990*. A Section 106 agreement is a legally binding private contract between a developer and a local planning authority and operates alongside a statutory planning permission.

¹⁶ Welsh Assembly Government, *New approaches to Planning Obligations*, April 2004

<http://new.wales.gov.uk/consultations/closed/planclouscons/1208282/?lang=en>

¹⁷ Department of Communities and Local Government, *Changes to Planning Obligations: a Planning-gain Supplement consultation*, December 2006 <http://www.communities.gov.uk/archived/general-content/planningandbuilding/planningbuilding/planningclosedconsultations/changesplanning/>

site-specific matters. Charge income will be used entirely to fund the infrastructure identified through the development plan process. Charges should include contributions towards the costs of infrastructure of regional or sub-regional importance. Legislation implementing PGS will therefore not be introduced in the next Parliamentary session.”¹⁸

5 Framework powers

The Bill was announced as including new **framework powers** relating to local development plans and the Wales Spatial Plan. The Secretary of State made a Written Statement in the House of Commons on 7 November 2007:

“The Secretary of State for Wales (Mr. Peter Hain): I am pleased to inform the House that the Queen's Speech on Tuesday 6 November unveiled the Government's Third Session legislative programme which contains 11 bills with Welsh Provisions. There will be three Bills with framework provisions for Wales:

- Education and Skills Bill
- Local Transport Bill
- Planning Bill”¹⁹

Further, in his statement to the National Assembly for Wales on 28 November 2007 the Secretary of State said:

“The Planning Bill will modernise and improve the planning system, cutting down bureaucratic and lengthy delays in the system. Framework powers will give the Assembly increased control over local development plans and the Wales spatial plan.”²⁰

However, these framework powers do not appear on the face of the Bill.

According to the Cabinet Statement on the Bill from the Minister for Environment, Sustainability and Housing:

“I also intend using the Planning Bill to secure legislative competence (Measure powers) for the National Assembly for Wales in respect of two areas which are distinctive to Wales:

the Wales Spatial Plan; and
Local Development Plans.

Current powers do not enable the Welsh Assembly Government to change the overall structure of Local Development Plans, their overarching preparation requirements and the monitoring and intervention powers allied to them. Neither do they enable the Welsh Assembly Government to define or otherwise alter the status of the Wales Spatial Plan.

Measure powers will enable the Assembly Government to take forward its policy in relation to these matters at the appropriate time, in consultation with stakeholders in Wales. I have secured the UK Government's agreement to these powers, and

¹⁸ HM Treasury, *Pre-Budget Report 2007*, Chapter 6

http://www.hm-treasury.gov.uk/pbr_csr/report/pbr_csr07_repindex.cfm

¹⁹ HC Deb 7 November 2007 c13WS [HC Deb 7 November 2007 c13WS](#)

²⁰ RoP p50, 20 November 2007 [RoP p59 28 November 2007](#)

appropriate provisions will be tabled at the Committee stage for incorporation into the Bill.”²¹

6 Some comments on the Bill as it affects Wales

The **Royal Town Planning Institute Cymru** (representing professional planners in Wales) is concerned that although on the face of it the IPC will only take decisions about nationally significant infrastructure projects (NSIPs) where responsibility is not already devolved to Welsh Ministers:

“the new proposed system will also tie in all ancillary planning consents related to the development, including stopping of highways, tree preservation orders etc. This represents a diminution of the responsibilities of elected local councils and the reserve powers of the Welsh Assembly Government in relation to NSIPs, which is of concern to RTPI Cymru.

It is also the position of the Welsh Assembly Government that responsibility for decisions on power generating stations and electricity lines should be devolved to Wales and not given to the IPC. RTPI Cymru continues to support that position and urges that the Bill be amended accordingly.”

Also

“Within the proposals, it is likely that National Policy Statements (NPS) will be given greater weight in determining NSIPs by the IPC than development plans. The Bill does not provide for a role for the Assembly Government in the development of NPSs, neither does it specify the status of Welsh policy in their development e.g. Planning Policy Wales, Wales Spatial Plan etc. There is therefore a risk that Welsh national planning policy and local policy could be overruled in particular policy areas and thus undermine policy. At the very least the Assembly Government should be specified as a statutory consultee, but ideally should be a central part of the drafting process of NPSs, where they affect Welsh interests.”²²

David Rosser, **Director of CBI Wales** writing in the Western Mail in May 2007 said the following about the Planning White Paper that preceded the Bill:

“The planning system can be a major impediment to timely delivery of energy projects, as it can with investment projects in many other areas. The CBI has reiterated our strongly held view that government in the UK, whether Parliament, Welsh Assembly Government or local authorities, must take urgent steps to ensure that the planning system functions in a more business-like fashion.

Last week's Planning White Paper goes some way to address our concerns. This is an area where the Welsh Assembly Government, if it chose to, could make a real difference within its current powers. By ensuring that the planning system in Wales operates effectively, the Welsh Assembly Government can help change Wales into a more attractive place for investment of all kinds, including energy generation and transmission.

²¹ Welsh Assembly Government, Jane Davidson AM, Minister For Environment, Sustainability and Housing, *Planning Bill*, Cabinet Written Statement, 14 December 2007

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2007/071214planning/?lang=en>

²² Royal Town Planning Institute Cymru, *Perspectives on the Planning Bill*, December 2007

<http://www.rtpi.org.uk/download/3335/RTPI-Cymru-Perspectives-on-the-Planning-Bill1.doc>

The Welsh Assembly Government's response to the Planning White Paper will be a key test of its commitment in this regard.”²³

Wales Environment Link has raised a number of key concerns about the Planning White Paper as follows:

- “The lack of clarity about the implications of the proposals for Devolved Administrations with regard to nationally significant infrastructure projects.
- The potential implications of the proposed Infrastructure Planning Commission (IPC) taking decisions on individual applications for infrastructure schemes of nationally significant energy projects in England and Wales.
- The potential implications of National Policy Statements being applied to Wales.
- An unaccountable body taking major planning decisions.
- The proposals for consultation - which do not provide people with a right to be heard at a public inquiry.
- The fact that exactly 50 years after the parliamentary bill to flood Cwm Tryweryn received Royal Assent, the proposals in the White paper make it far more likely that major projects could once again be imposed on Wales, against the wishes of the National Assembly and to the detriment of the Welsh environment.”²⁴

The **Civic Trust for Wales** made the following comment about the Planning White Paper:

“The White Paper may well have most significance for England. But we need to be wary. We should be worried on more than one count. Firstly, without greater autonomy over energy consents, Wales will remain a junior partner in making decisions about major projects west of Offa's Dyke, as well as in cross-border schemes. Not only this, but plans will be decided through a system that erodes local democratic input and limits third-party participation through the pseudo-engagement of “open-floor” consultation.”²⁵

The **Campaign for Rural Wales** expressed the following views on the White Paper's proposals:

“CPRW contends that insufficient justification exists for the proposed changes which will affect Wales. That the proposals also fail to account for the devolved role and responsibilities of the National Assembly for Wales and its commitment to open, transparent and accountable governance procedures which form a fundamental platform for its Sustainable Development Scheme.

Any National Policy statements should not only reflect the devolved regime of planning in Wales, but also properly involve local people and include a statutory requirement that such policies and proposals are subject to a full Strategic Environmental Assessment.

We strongly believe that any new legislative and decision making procedures for major infrastructure developments in Wales should

²³ David Rosser, Director CBI Wales, Western Mail, *Action by industry only part of equation in hunt for secure and long-term energy solution*, 30 May 2007
<http://icwales.icnetwork.co.uk/news/columnists/2007/05/30/action-by-industry-only-part-of-equation-in-hunt-for-secure-and-long-term-energy-solution-91466-19216178/>

²⁴ Wales Environment Link, *Planning White Paper: Planning for a Sustainable Future, Response by Wales Environment Link to UK Government*, August 2007
<http://www.waleslink.org/documents-for-downloading/wel-consultation-responses/Wales%20Environment%20Link%20-%20Planning%20White%20Paper%20Consultation%20Response.doc>

²⁵ Civic Trust for Wales, *Policy Briefing on the Planning White Paper*, July 2007
<http://www.civictrustwales.org/pdf/aw07/planningwp0707.pdf>



- Be made by democratically accountable politicians, not an unelected Commission.
- Include a legal right for people to challenge projects at a public inquiry.
- Ensure that Wales' natural, historic and cultural resources are properly accounted for and protected.
- Reflect the National Assembly for Wales' commitment that its strategic decision making processes reflect sustainable development principles.”²⁶

²⁶ Campaign for Rural Wales, *Communities and Local Government Consultation Planning for a Sustainable Future -White Paper*, Members' Briefing note, August 2007 <http://www.cprw.org.uk/Briefing%20paper.doc>