

# The Planning Series

## 17 - Consenting energy infrastructure

June 2023



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**Welsh Parliament**  
**Tŷ Hywel**  
**Cardiff Bay**  
**CF99 1SN**

Tel: **0300 200 6317**

Email: [Elfyn.Henderson@senedd.wales](mailto:Elfyn.Henderson@senedd.wales)

Twitter: [@SeneddResearch](https://twitter.com/SeneddResearch)

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# **The Planning Series**

## 17 - Consenting energy infrastructure

June 2023

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**Author**

Elfyn Henderson




# Contents

<b>1. Overview.....</b>	<b>3</b>
<b>2. What are the current processes for consenting energy infrastructure?.....</b>	<b>3</b>
On land.....	3
At sea.....	4
<b>3. What are the relevant planning polices?.....</b>	<b>4</b>
Welsh Government.....	5
UK Government.....	6
Local Planning Authorities .....	7
<b>4. What changes are on the horizon in Wales?.....</b>	<b>7</b>
<b>5. Key sources.....</b>	<b>9</b>
<b>6. Annex A- Map showing Welsh inshore and offshore areas .....</b>	<b>10</b>

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## Wind energy generation



		On land		At sea	
		Up to 10 MW	Over 10 MW	Inshore region (up to 12 NM) 1-350 MW  Offshore region (up to 200 NM) 50-350 MW	Over 350 MW
Deciding authority		Local Planning Authorities	Welsh Government	Welsh Government	UK Government
Consenting regime		Town and Country Planning	Town and Country Planning: Developments of National Significance	Section 36 Electricity Act 1989	Planning Act 2008: Nationally Significant Infrastructure Projects

## Energy generation (other than wind and most forms of energy storage)

		On land			At sea	
		Up to 10 MW	10-350 MW	Over 350 MW	<b>Inshore region</b> (up to 12 NM) 1-350 MW (renewable) 50-350 MW (non-renewable)  <b>Offshore region</b> (up to 200 NM) 50-350 MW (any energy generation type)	Over 350 MW
<b>Deciding authority</b>		Local Planning Authorities	Welsh Government	UK Government	Welsh Government	UK Government
<b>Consenting regime</b>		Town and Country Planning	Town and Country Planning: Developments of National Significance	Planning Act 2008: Nationally Significant Infrastructure Projects	Section 36 Electricity Act 1989	Planning Act 2008: Nationally Significant Infrastructure Projects

Notes:

NM = Nautical mile

MW = Megawatt

A Marine Licence from Natural Resources Wales is required for the consenting of all energy generation in the sea ('Welsh waters'), regardless of whether consent is required from the Welsh Ministers or the Secretary of State.

Welsh waters consist of the Welsh inshore region (from mean high water spring tides out to 12 nautical miles) and the Welsh offshore region (beyond 12 nautical miles out to 200 nautical miles), or to an equal distance between the Welsh coast and the coast of a neighbouring territory, whichever is closest to the Welsh coast. See map at Annex A.

## 1. Overview

This is a quick guide to energy consenting in Wales. It sets out the current consenting processes and planning policies. It also describes the legislative changes on the way, in the form of a Welsh infrastructure consenting bill.

## 2. What are the current processes for consenting energy infrastructure?

The consenting regime and deciding authority for energy generating infrastructure projects is determined by the installed generation capacity of the project and whether it is on land or at sea. This subsequently determines which planning policies are relevant to the decision-making process (see section 3 of this quick guide).

### On land

#### Wind

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Planning applications for wind energy generating projects on land in Wales which have an installed generation capacity of **10MW or more** (there is no upper limit) are made directly to the Welsh Ministers under the Developments of National Significance (DNS) process.

They are determined in accordance with policies set out in the 'development plan', which currently consists of **Future Wales: the national plan 2040** and the Local Development Plan (LDP) for the area, unless material considerations indicate otherwise.

The development plan also includes any Strategic Development Plan (SDP) for the region, but no SDP has yet been produced in Wales.

Material considerations must be genuine planning matters. The Courts have the final say on what can be regarded as material considerations in relation to any particular application.

You can read more about the DNS process in our **[DNS quick guide](#)**.

Applications for projects of **under 10MW** are made to the Local Planning Authority (LPA) and are also determined in accordance with the development plan, unless material considerations indicate otherwise.

## Non-wind

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Planning applications for energy generating projects on land, other than wind, which have an installed generation capacity of **between 10MW and 350MW** are made directly to the Welsh Ministers under the DNS regime and are determined in accordance with the development plan, unless material considerations indicate otherwise.

Energy generating projects on land, other than wind, of **over 350MW** are consented by the UK Secretary of State under the **Nationally Significant Infrastructure Projects (NSIPs) process**. They are determined in accordance with policies set out in UK **National Policy Statements**.

As above, projects of **under 10MW** are determined by the LPA in accordance with the development plan, unless material considerations indicate otherwise.

## At sea

In the Welsh **inshore area** (out to 12 nautical miles (NM)), **renewable** energy generation projects of **between 1MW and 350MW**, and **non-renewable** energy generation projects of **between 50MW and 350MW**, are consented by the Welsh Ministers under **section 36 of the Electricity Act 1989**.

In the Welsh **offshore area** (beyond 12NM out to 200NM), all types of energy generating projects of **between 50MW and 350MW** are consented by the Welsh Ministers under section 36 of the Electricity Act 1989.

Projects of **over 350MW** are consented by the Secretary of State under the NSIP process.

A Marine Licence, issued by Natural Resources Wales, is required for the consenting of all marine energy generation, regardless of whether a consent is required from the Welsh Ministers or the Secretary of State.

The map at Annex A shows the Welsh inshore and offshore areas.

A **previous version of this quick guide** sets out some of the legislative changes that established the current consenting processes.



### 3. What are the relevant planning policies?

#### Welsh Government

Town and country planning decisions in Wales should be taken in accordance with policies contained in the development plan for the area. As noted above, the development plan consists of **Future Wales: the national plan 2040**, any SDP in place, and the LDP (i.e. the national, regional and local tier plans), unless material considerations indicate otherwise.

Welsh national planning policy is set out in **Planning Policy Wales (PPW)**, which is a significant material consideration in the determination of applications.

PPW says the planning system has an active role to play in helping deliver the **Welsh Government's targets for generating renewable energy**, which are:

- 70% of electricity consumption to be generated from renewable energy by 2030;
- one gigawatt of renewable energy capacity to be locally owned by 2030; and
- new renewable energy projects to have at least an element of local ownership from 2020.

Policies 17 and 18 of Future Wales focus on renewable energy development and contain strategic spatial and detailed criteria-based policies respectively. They should be considered together in determining DNS applications, alongside relevant policies in PPW.

Future Wales identifies a number of 'Pre-Assessed Areas for Wind Energy' (shown in the map on **page 94**). In these areas, the Welsh Government has already modelled the likely impact on the landscape and has found them to be capable of accommodating development in an acceptable way. There is a presumption in favour of large-scale wind energy development (including repowering) in these areas. This is set out in **policy 17**. However any potential development would be subject to a number of criteria, which are set out in **policy 18**.

The Welsh Government has published the **assessment used to identify the pre-assessed areas**.

At the time of writing, the Design Commission for Wales is consulting on **design guidance for developing large-scale onshore wind and solar farms**. This will update and expand on the **Designing Wind Farms in Wales 2014 good practice guidance**.

The town and country planning system, however, only applies to the land. Energy projects in Welsh waters (the inshore and offshore areas), where Welsh Ministers are the deciding authority, should be determined in accordance with policies set out in the **Wales National Marine Plan**. The Marine Plan contains a number of general policies and two that are specific to energy generation: **Low Carbon**; and **Oil and Gas**.

## **UK Government**

**National Policy Statements (NPSs)** are produced by the UK Government. They set out its objectives for the development of nationally significant infrastructure and provide the legal framework for the planning decisions it makes in relation to them.

There are six Energy NPSs, which can be viewed on the **UK Government website**. The six Energy NPSs are:

- NPS for Overarching Energy (EN-1);
- NPS for Fossil Fuels (EN-2);
- NPS for Renewable Energy (EN-3);
- NPS for Oil and Gas Supply and Storage (EN-4);
- NPS for Electricity Networks (EN-5); and
- NPS for Nuclear Power (EN-6).

The Energy NPSs were published in 2011 under the 2010 to 2015 Conservative and Liberal Democrat coalition government. At the time of writing, the current **UK Government is consulting on revised NPSs EN-1 to EN-5**.

## **Local Planning Authorities**

For projects where the generation capacity means they are determined by the LPA, applications are determined in accordance with the development plan, unless material considerations indicate otherwise.

## 4. What changes are on the horizon in Wales?

In July 2022, the **First Minister announced the Welsh Government would bring forward an infrastructure consenting bill** to simplify the process for agreeing major infrastructure projects and introduce a single consent requirement to construct and operate a project. This would only apply to those projects for which consenting is devolved to Wales.

The First Minister added:

The consenting Bill will allow us to develop a consenting regime in Wales that is quicker and slicker than the current one, that will allow renewable energy projects to move ahead so that they can help us with the climate emergency, but will, at the same time, recognise our obligations to not do things that could put that very fragile environment at risk. And that will be the debate, the balance between those two aspects, which I have no doubt we will have as the Bill makes its way through the Senedd.

The **Welsh Government consulted on initial proposals in 2018** and has published a **summary of responses to the consultation**. You can read more on these proposals in our **previous article**.

Not only would the bill consolidate existing processes into a single consent, it could also include a wide range of secondary consents, including Compulsory Purchase Orders, Marine Licences and Environmental Permits. This would mean developers would not have to apply for the secondary consents separately.

The bill is expected to be introduced into the Senedd **before the end of the 2023 summer term**.

The Senedd's Climate Change, Environment and Infrastructure Committee looked into consenting issues as part of its **renewable energy inquiry** in spring 2022. The **Committee recommended** better resourcing for LPAs, clarification of the timeline for introduction of the infrastructure consenting bill, and clarification on how the Welsh Government will streamline the process for developing renewable energy projects in the Celtic Sea. The **Welsh Government's response is set out in this document**.

## 5. Key sources

### Welsh Government

Welsh national planning policy is set out in **Planning Policy Wales (PPW)** and **Future Wales: the national plan 2040**.

The Welsh Government has published research which informed the identification of the priority areas for solar and wind energy in Future Wales: **Assessment of on-shore wind and solar energy potential in Wales**.

The **Wales National Marine Plan** sets out the policies relevant to deciding energy generation projects in Welsh waters, where the Welsh Ministers are the deciding authority.

### Design Commission for Wales

At the time of writing, the Design Commission for Wales is consulting on **design guidance for developing large-scale onshore wind and solar farms**. This will update and expand on the **Designing Wind Farms in Wales 2014 good practice guidance**.

### UK Government

The UK Government's **National Policy Statements (NPSs)** provide the framework for its decisions on nationally significant infrastructure projects consented under the Planning Act 2008. There are **six NPSs for energy infrastructure**. At the time of writing, the **UK Government is consulting on revising five of them**.

### Senedd Research

Other planning quick guides produced by Senedd Research are available on our **quick guides webpage**, including a **DNS quick guide**.

### Senedd Cymru

The Climate Change, Environment and Infrastructure Committee's **inquiry and report on renewable energy**, and the **Welsh Government's response**.

## 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**.

## 6. Annex A- Map showing Welsh inshore and offshore areas

