

Developments of National Significance



Penderfyniadau Cynllunio
ac Amgylchedd **Cymru**
Planning & Environment
Decisions **Wales**

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Key legislation and policy

Primary Legislation	<ul style="list-style-type: none"> • Town and Country Planning Act 1990 (as amended) • Planning (Wales) Act 2015
Secondary Legislation	<ul style="list-style-type: none"> • Developments of National Significance (Wales) Regulations 2016 (as amended) • Developments of National Significance (Procedure) (Wales) Order 2016 (as amended) • Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (as amended) • Developments of National Significance (Fees) (Wales) Regulations 2016 (as amended) • Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended)
National policy and guidance	<ul style="list-style-type: none"> • Developments of National Significance, Procedural Guidance (PINS), Version 2.2, October 2019
Judgments	<ul style="list-style-type: none"> • None
Other guidance	<ul style="list-style-type: none"> • None

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Introduction

1. Developments of National Significance (DNS) are planning applications for infrastructure developments of the greatest significance in Wales because of their potential benefit and impact. They are made to the Welsh Ministers, rather than to the local planning authority, under Section 62D of the Town and Country Planning Act 1990 (as amended by the Planning (Wales) Act 2015, which inserts Section 62D (and subsequent Sections up to 62L) into the 1990 Act).
2. DNSs fall into 5 general categories: Energy; Transport; Water; Wastewater; and Waste. These include:
 - electricity generation facilities with an installed generating capacity more than 10 megawatts (including onshore wind farms);
 - underground gas storage facilities;
 - facilities for liquid natural gas;
 - gas reception facilities;
 - airports; railways;
 - rail freight interchanges;
 - dams and reservoirs;
 - facilities for transfer of water resources;
 - wastewater treatment plants; and
 - hazardous waste facilities.Overhead electric lines up to 132kV voltage have also recently been added.
3. The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 specify the nature and scale of the various types of installations that fall within the definition of a DNS (e.g. the volume of water to be held in a reservoir or the capacity of a wastewater treatment plant). The thresholds for some types of development have been increased since the original legislation.
4. The same Regulations list the prescribed Secondary Consents which may also be dealt with through the DNS procedure where they are associated with the main application. They include a range of consents and authorisations in respect of ancient monuments, highways and public rights of way, listed buildings and conservation areas, hazardous substances, and commons. The powers to determine these are vested in the Welsh Ministers along with their DNS powers, and it is usually beneficial for applicants to submit these with the DNS application. The Welsh Ministers can also call-in secondary consents if they are considered to be connected to the DNS application.
5. The purpose of the DNS process is to ensure timely decisions are made on these significant planning applications, and it aims to achieve this in 2 ways:
 - firstly, by front-loading the process and encouraging applicants to consult widely and seek to resolve as many issues as possible before making their formal application; and

- secondly, by following a strict timetable for the consideration and determination of an application once it has been submitted.

Pre-Application Procedures

6. The legislation prescribes that an applicant must notify PINS Wales and the LPA in advance of its intention to make a DNS application, and the application then has to be submitted within 12 months of acceptance of the notification. The applicant must also publicise and consult on the proposed application for a period of at least 6 weeks (after acceptance of the notification), and the legislation specifies the minimum requirements for this, listing appropriate community consultees and specialist consultees (NRW is usually a key consultee). However, in order to ensure robust and comprehensive consultation is undertaken, it is expected that most projects will exceed this minimum requirement.
7. Following the consultation period, the applicant must prepare a Consultation Report which provides details of the process followed, responses received and how it has had regard to those responses. The Consultation Report is then submitted as part of the formal application.
8. The applicant is encouraged to try to resolve as many matters as possible before making the formal application, and PINS Wales provides advice (subject to a scale of fees) on how best to do that and on how to prepare an appropriate application. That advice is generally provided by our Planning Officers, but an Inspector may also be involved (though not the one who will conduct the examination of the application). This service is in addition to our statutory functions such as EIA screening and scoping.
9. PINS Wales provides pre-application advice on a wide range of matters including: how to approach EIA and Habitats Regulations Assessment; the likely main issues and policy framework that should be addressed in the application documents; good practice and strategies for consultation; the application process and likely procedures. It may also provide without-prejudice merits-based advice on the planning matters concerned. However, it is up to the applicant how much it takes advantage of this service.
10. The Regulations include provision for pre-application services from the LPA, and the applicant is also advised to seek advice from and consult appropriate statutory consultees and other interested parties. Experience has shown that the most successful applicants have consulted widely (including with local residents) and have taken into account responses in the design of their scheme, so that there is little opposition to the subsequent formal application.

Post-Submission Procedures and Timetable

11. The application requirements are set out in article 12 of the 2016 Order and include: the application form; application plans; an Environmental Statement (where required); a Design and Access Statement; the Consultation Report; any other information or evidence requested at the pre-application stage; a statement about secondary consents (if relevant) and, if one is included, the details specified in the Regulation; and a statement on the status of any Section 106 Agreement/Undertaking in respect of

planning obligations. Statements of Common Ground are also encouraged but are not mandatory.

12. The submitted application is first assessed by PINS Wales to ensure it is of a satisfactory standard to be validated and, if so, a notice of acceptance is issued. We have 6 weeks to do this for an EIA development or 4 weeks for a non-EIA case. Assessment of the adequacy of the Environmental Statement is also carried out during this stage.
13. When the application is accepted as valid an Inspector is appointed to examine the application (though they are usually aware much earlier and are likely to have carried out the ES Assessment). On acceptance of validation, the “clock” starts to run on the prescribed timetable for examination and determination of the application, such that the Inspector’s report is to be submitted within 24 weeks and the Welsh Ministers have a further 12 weeks to issue a decision (i.e. 36 weeks for final determination).
14. An overview of the timetable is included in the Procedural Guidance document and, in summary (within the periods specified), it requires:

Validation and acceptance of an application without an ES	Within 4 weeks of receipt
Validation and acceptance of an application with an ES	Within 6 weeks of receipt
Formal Acceptance	Determination Period starts
Representation period (receipt of consultee responses, interested party representations and Local Impact Report)	Normally 5 weeks from acceptance
Window for request to vary the application & issue confirmation of procedure(s)	Within 10 working days from the end of the representation period.
Complete examination and issue Inspector’s report to WG	Within 24 weeks of acceptance.
Determination by Welsh Ministers	Within 36 weeks of acceptance

15. The first step is for PINS Wales to arrange for all consultation and publicity to be carried out and for all representations to be received within 5 weeks of the date of acceptance (though this can be extended if necessary). During the same period the LPA is required to prepare and submit a Local Impact Report (LIR), for which they are paid a fee.
16. The scope of LIRs are set out in Section 62K of the 1990 Act and Article 25 of the 2016 Order and includes information on relevant planning history, land designations, planning policies and guidance, and suggested conditions to mitigate any likely impacts should planning permission be granted. The LIR should present a factual, objective assessment of the local impacts and should be quite separate from any representation the Council may wish to make on the merits of the proposal.

17. Then there is a period of 2 weeks (10 working days) for PINS Wales to decide what procedure(s) are to be followed for examination of the application, i.e. written representations, topic specific hearing(s), public inquiry or a hybrid of these. Participation at any hearings or inquiries is by invitation only, and PINS Wales itself is responsible for organising and running any such events. Hearings and inquiries are open for people to observe but non-invitees may only speak at the discretion of the Inspector and only on the topic(s) specified.
18. During the same 2 weeks period (which is fixed and cannot be extended) the applicant has an opportunity to propose minor changes to the scheme, but substantial changes cannot be accepted after an application has been submitted. PINS then has 5 working days to decide whether to accept the proposed changes or not. If they are accepted, the applicant has 4 weeks to submit any revised documents and plans, and PINS will consider whether a short period of suspension is needed to allow time for that work and any necessary further consultation.
19. There then follows a period of some 17 weeks for the examination of the application by the Inspector and for the writing of the Inspector's report (i.e. by the end of week 24). Clearly, if hearings or a public inquiry are to be held, they must take place quite quickly (the legislation says by week 15 for hearings or week 18 for a public inquiry), and PINS normally must give 4 weeks' notice of such events. Participants may submit further representations on the topics specified, and a strict timetable is set for this. A site visit will also be carried out. Parts 7 and 8 of the DNS Regulations govern the setting up and running of hearings and inquiries.
20. In certain circumstances the examination may be suspended by PINS Wales, and the timetable "clock" will be stopped for a period. This may be justified for a number of reasons, e.g. delays in resolving an important matter, or shortcomings identified in the evidence (the Guidance provides further advice). However, suspensions have to be reported to the Senedd and should be seen as exceptional events rather than the norm. Not only do they delay the decision-making process, but they can also complicate the writing of the Inspector's report. Part 62L of the 1990 Act governs the determination period and the requirements around suspensions.
21. After submission of the Inspector's report, the Welsh Ministers then have 12 weeks in which to make and issue the decision (or up to week 36 if the report is submitted later than week 24).
22. Some types of cases (132kV overhead electric lines) have now been delegated for the Inspector to make the decision (see Regulations 11A, 18A and 28A, which were amendments to the Regulations made in 2019). In these cases, the Inspector writes a decision document, and this has to be issued by the end of week 24.

Inspector's Role

23. For EIA developments the Inspector's first involvement is likely to be in assessing the adequacy of the Environmental Statement during the initial period of validation of the application, though if chart time is constrained that duty may be carried out by another Inspector or a member of the Planning & Environment Team. Reading the application documents (and ES if appropriate) at that time enables the appointed Inspector to become familiar with the case. The Consultation Report, in particular, gives an early insight into the positions of the consultees and the issues that are likely to be the key to determination of the case.
24. There is limited work for the Inspector to do during the next 5 weeks until the LIR and the responses to PINS' advertisement and consultation are received, though it can be useful to keep up to date with responses as they are received. Within 10 working days of the end of the representation period the Inspector needs to read the various submissions, decide what the key issues for the case are and decide what procedure(s) are to be used for the examination, so that the relevant notice can be issued on time (allowing for translation if needed).
25. A further consideration at this time is that the Fees Regulations require PINS to provide to the applicant an estimate of the number of Inspector days likely to be needed for the examination. Once the procedure(s) have been decided, the Inspector should be well placed to make this estimate, though advice can be provided by the casework team to assist the Inspector to do it.
26. It may be that sufficient information has been submitted in the application documents and consultation responses to enable the Inspector to proceed to writing the report. However, if more is needed or queries need to be resolved, it is up to the Inspector to decide how that can best be accomplished.
27. If written representations are to be used for some or all of the topics at issue, the Inspector (through the case officer) will write to the parties concerned detailing the matters on which further information is needed and confirming the timetable for submission (the Regulations say within 4 weeks of the Inspector's request). When those are returned the Inspector should consider whether or not further consultation is required. They can then move on to writing the report.
28. In respect of letters to the parties, as these are usually non-standard letters, it is the Inspector's responsibility to draft them for the casework team to send. Previous examples are available on request, and the casework and Planning & Environment teams can provide advice if required. It is usually preferable for communications to be drafted as a notice to all participants if possible, so that they can be conveniently published on the DNS portal website.
29. If a hearing (or more than one hearing) is considered appropriate, then the Inspector should specify the topics to be covered and the people who should be invited to attend and participate, so that the case officer can then organise the event(s) and issue the invitations. There is a set timetable for the invited parties to submit written statements on the topics to be covered in advance of the hearing(s). If appropriate, it may be

helpful for the Inspector to specify any matters on which particular further information is sought rather than raise these for the first time at the hearing.

30. If a public inquiry is needed (for example, if complex technical or scientific evidence is in dispute which would benefit from forensic cross examination) then the Inspector should initiate it in the same way as hearings. Again, the regulations set out timetables for the submission of statements of evidence for the witnesses concerned.
31. The Inspector will also need to give consideration to, and provide advice to the case officer on, the requirements of any such events, as it is up to PINS itself to organise the venue and all the logistics for an event and to be responsible for all administration of the event on the day (the role usually carried out by the LPA for other hearings and public inquiries). The planning and preparations involve finding and booking a suitable venue, making arrangements for necessary facilities to be provided at the venue (e.g. sufficient tables and chairs, display boards, jugs of water and glasses, microphone systems, access to a photocopier, toilets, etc.), and arranging translation support if appropriate.
32. The administrative arrangements on the day usually fall entirely on the Inspector, though the venue is told how to lay out the room and is asked to provide someone to liaise with the Inspector. Support can also be requested from PINS staff for a particularly complex case, though this is not usually provided. Administration on the day involves: arriving early to ensure the room has been properly laid out; dealing with queries by the participants on administrative and procedural matters; and packing up any loose ends at the end of the hearing/inquiry. If an event is expected to be of significant scale and last for more than a day or two, it may be necessary to employ a programme officer to provide support at the event. This needs to be identified early in the examination.
33. It is vital that the Inspector liaises with the case officer (or officers in business support) in making all of these arrangements, as they have considerably more experience of such events than most of their colleagues in the office.
34. As for the hearing/inquiry itself, these are run in a similar way to any other event and are open for members of the public to observe. Although third parties who have not been invited to take part have no rights to do so, the Inspector may permit them to speak but only on the topics covered by the event. It is not an opportunity for them to raise anything else, and there is no "AOB" on the hearing agenda.
35. Should it be necessary to hold a DNS hearing or inquiry virtually, please refer to the separate guidance on Virtual Events, and consider whether there are any requirements in the DNS regulations that may have implications for the timing of issuing letters to invited participants, in liaison with the case officer.
36. The Inspector should always visit the site, using whatever procedure is most appropriate (ASV, ARSV, USV), and may make further informal unaccompanied visits at any time. There is no set timetable for carrying out the main site visit, but it is often helpful to the Inspector (and to the parties) to do it early in the timetable. If it is done during the initial consultation and publicity period (immediately after the application has been submitted) the Inspector is fully informed when deciding on the key issues and

the most appropriate procedure. If necessary, another visit can always be carried out at a later date.

37. As explained above, the procedures make provision for the examination timetable to be suspended for a period under certain circumstances. Should the need for suspension arise, it is up to the Inspector to decide for what length of time the suspension will run and what work is to be carried out during the suspension (i.e. the purpose of the suspension). If inter-party consultation is needed that should be built into the timetable.
38. Whilst the Inspector has powers to ask for further information and is the person best placed to decide whether a suspension is appropriate or not, the Inspector should announce that it will be confirmed in writing by PINS. PINS has to report any suspension to Welsh Government, and they in turn have to report it to the Senedd, so decisions for suspension are not taken lightly, and PINS usually liaises with Welsh Government before formally confirming the suspension. Consequently, the final decision is not to be taken solely by the Inspector.
39. The Inspector's final duty is to write the report (or decision, in a delegated case). These are similar in most respects to reports for call-in or recovered cases. However, there is a useful template that provides guidance on the structure and content of the report.
40. A particular feature of DNS work is the fragmented timetable with periods of intense Inspector work interspersed with periods of inactivity, but all within a framework of prescribed target dates. This can be difficult to accommodate in Chart and limits the type of work that can be done during the inactive periods, particularly as they may be subject to change at short notice. Nevertheless, it is important for the Inspector to look ahead at the work likely to be involved at each stage so that reasonable estimates are allowed for in Chart. In doing this, the Inspector is expected to be more proactively involved in the management of their Chart than might normally be the case.
41. As the 36 weeks determination period (24 weeks for delegated cases) is set by primary legislation and cannot be extended, it is even more important for the Inspector to adopt a proactive approach to managing the case as a whole. The provisions for suspensions may be used where delays occur. Whilst the 24 weeks target for submission of the Inspector's report is not set in the legislation, it is PINS' standing agreement with the Welsh Government and should be achieved.
42. Finally, the Inspector's costs are rechargeable to the applicant for DNS work, and the Inspector will be asked by the Business Support Team to confirm their time and other costs regularly. This is a fairly simple process.