



National Assembly for Wales
Cynulliad Cenedlaethol Cymru

Planning Act 2008

Planning and Energy Act 2008

This paper provides a short summary of the provisions of the *Planning Act 2008* and their implications for Wales.

It also outlines the provisions of the *Planning and Energy Act 2008*.

January 2009

Planning Act 2008

Planning and Energy Act 2008

Graham Winter

January 2009

Paper number: 09/001/gw

© National Assembly for Wales Commission 2009

© Comisiwn Cynulliad Cenedlaethol Cymru 2009

Executive Summary

The *Planning Act 2008* establishes 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, some of which may also be introduced in Wales.

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 and they will also be subject to scrutiny in the Houses of Parliament. Assembly Members will have an opportunity to consider and seek to influence a national policy statement and its implications for Wales through this parliamentary scrutiny process.

The Act will enable the Assembly to pass **Measures relating to plans** of the Welsh Ministers and local planning authorities concerning the development and use of land. Measures may also be passed which relate to the review by local planning authorities of matters affecting their area's development.

The Act makes various alterations to the existing town and country planning regime. Most of these are technical in nature and at present will only apply to England. Welsh Ministers may by order introduce similar provisions in Wales that correspond to the England-only provisions. Other provisions in the Act are for England and Wales but will be commenced separately in Wales by the Welsh Ministers.

The Act also makes provision for a new **Community Infrastructure Levy** (CIL), aimed at ensuring that the costs incurred in providing infrastructure to support the development of an area can be met, either in part or whole, by landowners who have benefited from an increase in land value. Introduction of the CIL will be **discretionary** for local planning authorities.

The *Planning and Energy Act 2008* enables local planning authorities in Wales to set **requirements for energy use and energy efficiency** in their local development plans, if they choose to do so. In effect it provides statutory support for the so-called “Merton-rule”.



Contents

1	Introduction.....	1
2	Main provisions of the Planning Act 2008.....	1
2.1	Infrastructure Planning Commission.....	1
2.2	Assembly Measure-making powers.....	2
2.3	Changes to the planning regime.....	3
2.4	Community Infrastructure Levy.....	4
3	Planning and Energy Act 2008	5
	Annex A: Part 9 of the Planning Act 2008: Extent and commencement.....	6

Planning Act 2008/Planning and Energy Act 2008

1 Introduction

This paper provides a short summary of the provisions of the *Planning Act 2008* and their implications for Wales. It also outlines the provisions of the *Planning and Energy Act 2008*.

The *Planning Act 2008* received Royal Assent on 26 November 2008. The *Planning and Energy Act 2008* received Royal Assent on 13 November 2008. Both Acts have implications for Wales.

2 Main provisions of the Planning Act 2008

2.1 *Infrastructure Planning Commission*

The *Planning Act 2008* introduces 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. However in Wales the new system only applies where the responsibility for granting planning or development consent for a project was previously a reserved matter as follows:

- The construction or extension of a generating station of over 50 mega watts onshore or over 100 mega watts offshore;
- The construction of electricity lines above ground, unless not over 132 kilovolts or a single consumer;
- The underground storage of gas in natural porous strata above certain thresholds;
- The construction of pipelines; and
- The construction or alteration of a harbour with an increase in facilities above certain thresholds.

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

The Act provides for the Chair of the Commission to decide whether an application will be considered by a single Commissioner or a panel of Commission members. When an application relating to Wales is to be determined, wherever reasonably practicable, at least one member of the decision-making panel must be nominated by Welsh Ministers.

National policy statements will set the framework for decisions by the Commission. The Secretary of State will have a wide discretion as to how prescriptive the policy should be.

Where the Secretary of State proposes to designate a national policy statement, or amend an existing national policy statement, he/she must carry out such consultation and arrange for associated publicity as he/she thinks appropriate, and a Parliamentary scrutiny process must also be completed. Before designating a national policy statement, the Secretary of State also needs to carry out an appraisal of sustainability. The Parliamentary scrutiny process was a late addition to the Bill.

The Secretary of State must also consult such persons as may be prescribed. If a national policy statement identifies particular sites, then the appropriate local planning authorities must also be consulted. Whilst there is no specific requirement in the Act for the Secretary of State to consult Welsh Ministers on national policy statements, in a Cabinet Statement in July 2008, the Minister for Environment, Sustainability and Housing said:

“UK Ministers have assured me that there will also be appropriate consultation with the Welsh Assembly Government during their development.”¹

Parliamentary Scrutiny of a national policy statement means that if either House or a Committee of either House makes recommendations about a statement, the Secretary of State must lay a formal response. In practice it is likely that either an existing Select Commons Committee or a specially constituted ad-hoc Committee will take evidence on and consider a proposed national policy statement². **Assembly Members will therefore have an opportunity to consider and seek to influence a national policy statement and its implications for Wales through this parliamentary scrutiny process.**

2.2 Assembly Measure-making powers

Part 10 of the Act adds certain matters to the **legislative competence** of the National Assembly for Wales. Section 202 adds three new matters to Field 18 on town and country planning. This will **enable the Assembly to pass Measures relating to plans of the Welsh Ministers and local planning authorities concerning the development and use of land**, subject to an exception regarding the status of such plans. Measures may also be passed which relate to the review by local planning authorities of matters affecting their area's development.

¹ Welsh Assembly Government, Jane Davidson, Minister for Environment, Sustainability and Housing, Cabinet Written Statement, [Planning Bill Update](#), 17 July 2008

² House of Commons Liaison Committee, [Planning Bill: Parliamentary Scrutiny of National Policy Statements](#), Fourth Special Report of Session 2007–08, 16 October 2008

In her Cabinet Statement of July 2008, the Minister has said the following about these Measure-making powers:

“This is a very significant milestone in the development of the land use plan system in Wales and would allow for the continued development of a distinctive land use plan system that more appropriately meets the needs of Wales and its communities. The powers will allow the Assembly to continue to update and adapt the land-use plan system in Wales, including local development plans and their relationship with the Wales Spatial Plan, in accordance with Welsh priorities and timescales.³”

2.3 Changes to the planning regime

Part 9 of the Act makes various **alterations to the existing town and country planning regime** (which will continue to apply to types of development not covered by the Commission). Most of these are technical in nature and at present will only apply to England. Welsh Ministers may by order introduce similar provisions in Wales that correspond to the England-only provisions. Such an order would be subject to the affirmative resolution procedure of the National Assembly for Wales.

Other provisions in Section 9 are for England and Wales but will be commenced separately in Wales by the Welsh Ministers. (see Annex A)

In her Cabinet Statement on the Planning Bill in July 2008, the Minister said:

“The Welsh Assembly Government has also secured provision in the Bill giving Welsh Ministers the ability to introduce a number of other miscellaneous reforms to the development control regime, which were originally included in the Bill on an England only basis. This “power to apply” provision gives Welsh Ministers a wholly discretionary ability to bring forward the reforms if they are considered desirable following consultation in Wales

[...]

I intend preparing a comprehensive package of possible changes to development control arrangements incorporating the above miscellaneous amendments, as appropriate, and other evidence based improvements coming forward in Wales. It will also take account of any relevant recommendations emerging from the Killian-Prety end to end review of the development control system commissioned by the UK Government, currently underway. That review is due to report later this year.⁴”

The report of the Killian-Prety review of the development control system was published on 24 November 2008⁵.

On 10 December 2008, the Minister issued a further statement announcing a **review of the planning application process** in Wales. She said:

³ *ibid*

⁴ Welsh Assembly Government, Jane Davidson, Minister for Environment, Sustainability and Housing, Cabinet Written Statement, [Planning Bill Update](#), 17 July 2008

⁵ The Killian Prety Review, [Planning applications: A faster and more responsive system Final Report](#), November 2008

"I am announcing today my intention to streamline the planning application system in Wales, delivered by the 25 local planning authorities

I am aware that more needs to be done to deliver a system which better meets our expectations. The system must be proportionate and efficient, delivering decisions which are open, fair, consistent and transparent. It is essential that the system inspires public and business confidence, delivering quality development and places, particularly in the light of challenging global and national economic circumstances.

This work will enable us to address the challenges we now face. It will draw upon evidence from across Wales and the rest of the UK, including the recently completed Killian Pretty review in England. It will identify examples of good practice and will propose areas for future improvement. Using the provisions in the 2004 and 2008 Planning Acts we will set out the direction of travel and identify a programme of work to ensure that we achieve our objectives.⁶"

2.4 Community Infrastructure Levy

The *Planning Act 2008* also makes provision for a new **Community Infrastructure Levy** (CIL), aimed at ensuring that the costs incurred in providing infrastructure to support the development of an area can be met, either in part or whole, by landowners who have benefited from an increase in land value.

The Act's provisions are in the nature of a general framework, with the detail of the CIL's scope and operation to be determined by **regulations to be made by the Secretary of State**.

In her Cabinet Statement in July 2008, the Minister said

"As the levy is in the nature of a tax, responsibility for making the Regulations is not to be devolved to Welsh Ministers. The provisions will therefore be taken forward on an England and Wales basis by the Department of Communities and Local Government (DCLG).⁷"

Introduction of the CIL will be **discretionary for local planning authorities**. 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 responsibilities.

It is the UK Government's intention to make secondary legislation so as to have the CIL in place from 1st April 2009 for those authorities who wish to introduce it.

The Welsh Assembly Government issued a consultation on the CIL in August 2008⁸, circulating the DCLG policy proposals paper to stakeholders in Wales.

⁶ Welsh Assembly Government, Jane Davidson, Minister for Environment, Sustainability and Housing, Cabinet Written Statement, [Streamlining the Planning Application Process in Wales](#), 10 December 2008

⁷ Welsh Assembly Government, Jane Davidson, Minister for Environment, Sustainability and Housing, Cabinet Written Statement, [Planning Bill Update](#), 17 July 2008

⁸ [Welsh Assembly Government consultation on Community Infrastructure Levy \(CIL\)](#), August 2008

3 Planning and Energy Act 2008

The *Planning and Energy Act 2008* was introduced into Parliament as a Private Members' Bill in December 2007 and secured the support of the UK Government. The Act **enables local planning authorities in England and Wales to set requirements for energy use and energy efficiency in their development plans, if they choose to do so**. In effect it provides statutory support for the so-called "Merton-rule"⁹ for those authorities who wish to adopt such a planning policy.

It gives local authorities the power to include in their development plans policies that impose **reasonable requirements** for:

- a proportion of energy used in development in their area to be energy from **renewable sources** in the **locality** of the development;
- a proportion of energy used in development in their area to be **low carbon energy** from sources in the **locality** of the development; and
- development in their area to comply with **energy efficiency standards** that exceed the energy requirements of building regulations.

In July 2008 the Welsh Assembly Government issued a *Planning for Climate Change*¹⁰ consultation paper seeking comments on possible changes to national planning policy including the following areas: -

- The use of sustainable building standards to drive up the sustainability of buildings in Wales;
- A requirement that in future major development in Wales should incorporate on site and/or near-site decentralised and renewable or low-carbon energy equipment contributing at least an additional 10% reduction in CO2 emissions, and;
- The ability for Local Planning Authorities (LPAs) to set higher standards in the above areas in their Local Development Plans for strategic sites.

⁹ Named after the planning policy, pioneered by the London Borough of Merton, which requires the use of renewable energy onsite to reduce annual carbon dioxide (CO2) emissions in the built environment.

¹⁰ Welsh Assembly Government [Further Consultation on Planning for Climate Change](#), July 2008

Annex A: Part 9 of the Planning Act 2008: Extent and commencement

The **England-only** provisions for which Welsh Ministers may by order introduce similar provisions in Wales (by virtue of Section 203) are:

- section 184 (correction of errors in decisions);
- section 189 (compensation where development order or local development order withdrawn);
- section 190 (power to make non-material changes to planning permission);
- section 194(1) and Schedule 9 (use of land: power to override easements and other rights);
- section 195 (applications and appeals by statutory undertakers);
- section 196 and Schedule 10 (determination of procedure for certain proceedings);
- paragraphs 2(3) and (4) and 3(3) of Schedule 7.

The **England and Wales** provisions (to be commenced in Wales by the Welsh Ministers) are set out in Section 241 as follows:

- section 183 (good design);
- section 185 (power of High Court to remit strategies, plans and documents);
- section 187 and parts of schedule 7 that are not England only (power to decline to determine applications: amendments);
- section 188 (local development orders: removal of requirement to implement policies);
- section 191(1) and (3) (validity of orders, decisions and directions);
- section 192, 193 and schedule 8 (tree preservation orders);
- section 197 and schedule 11 (appeals: miscellaneous amendments);
- section 198 (appeals relating to old mining permissions);
- section 199 (fees for planning applications);
- section 200 (fees for appeals).



There is one **Wales-only** provision (to be commenced in Wales by the Welsh Ministers) that is set out in Section 241 as follows:

- section 186 (power of High Court to remit unitary development plans in Wales)

Sub-sections 194(2) to (5) confer on the Welsh Ministers the power to make amendments to the Welsh Development Agency Act 1975 regarding the power to override easements and other rights. These come into force on 26 January 2009 (two months after the Act was passed).