Appendix 3: Environmental Impact Assessment

A3.1. A DNS application may need to undergo Environmental Impact Assessment (EIA). This chapter sets out the procedural requirements that apply to DNS which are EIA development under the Environmental Impact Assessment (Wales) Regulations 2016\(^1\) (the EIA Regulations). These requirements include:

- Pre-application consultation requirements on applicants
- Notification and consultation requirements on the Welsh Ministers, and
- Procedures for screening and scoping.

Appendix 1 provides an overview of the actions, responsibilities and activities required by different parties during the DNS process, including in relation to EIA.

EIA Regulations

A3.2. Under the EIA Regulations, the Welsh Ministers have the power to direct when an application is EIA development. Applicants may also decide to undertake a voluntary EIA without requesting a direction from the Welsh Ministers. As the Planning Inspectorate Wales (PINS Wales) is authorised by the Welsh Ministers to undertake their EIA responsibilities for DNS applications, this guidance makes reference to PINS Wales where acting on behalf of the Welsh Ministers.

A3.3. Applications which are ‘EIA development’ must be accompanied by an Environmental Statement (ES) that reports on the likely impacts on the environment. At the submission and validation stage the ES will be checked to ensure that it complies with Schedule 4 of the EIA Regulations and is deemed adequate. The ES will also be considered carefully during a DNS examination. If at any stage of the process the ES is found not to be adequate the process will be suspended\(^2\) and further information will be requested.

A3.4. A good ES is one that clearly explains the processes followed, the forecasting methods used and the measures envisaged to prevent, reduce and where possible offset any significant adverse effects. The process is iterative and must include public participation. Effort in the pre-application stage to agree the scope, methodology and baseline information relied upon for the assessment should assist a smooth examination process.

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\(^1\) The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016

\(^2\) Regulation 11(e) of the Developments of National Significance (Wales) Regulations 2016 allows PINS Wales to issue a notice suspending the determination period specified in s62L of the 1990 Act.
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**Pre-application advice**

A3.5. Regulation 8 of The Developments of National Significance (Wales) Regulations 2016 places a duty on PINS Wales to provide pre-application advice to prospective applicants where it receives a request for such advice.

A3.6. In relation to EIA, applicants may choose to request a screening or scoping direction from PINS Wales. When doing this, applicants may also choose to seek broader pre-application advice. This may relate to the EIA or another matter\(^3\).

> An applicant can request **pre-application advice** from PINS Wales at any time during the DNS process before submission of the application, and this can cover EIA requirements for the development.

A3.7. PINS Wales is able to charge for pre-application advice, including advice related to the EIA process. However, there will be no charge for statutory EIA screening or scoping directions. Where pre-application advice on EIA is sought alongside a request for a scoping direction, PINS Wales will append a report to the statutory scoping direction. More details on pre-application advice and charging arrangements can be found in Chapter 2 (Pre-application).

**Screening and Scoping**

A3.8. An applicant intending to submit a DNS application must first notify\(^4\) PINS Wales of the proposed application. PINS Wales must give notice of acceptance\(^5\) of that notification within 10 working days. It must include either a screening direction or a statement confirming that an ES is required in relation to the proposed development\(^6\). Prospective applicants are therefore encouraged to consider whether their application will require EIA at an early stage.

> When an applicant seeks a **notification** from PINS Wales as to whether their scheme is a DNS, they will be required to submit a screening direction or a statement confirming that an ES is required in relation to the proposed development.

**Screening**

A3.9. Types of development listed in Schedule 1 to the EIA Regulations are always EIA development. Those listed in Schedule 2 only require EIA if the development is likely to have significant effects on the environment.

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\(^3\) See Chapter 2 for information on the types of pre-application services that can be provided.

\(^4\) s.5 of the Developments of National Significance (Procedure) (Wales) Order 2016

\(^5\) s.6 of the Developments of National Significance (Procedure) (Wales) Order 2016

\(^6\) s.5 of the Developments of National Significance (Procedure) (Wales) Order 2016
A3.10. A screening direction\textsuperscript{7} is a written statement from PINS Wales directing whether a DNS which falls under Schedule 2 is EIA development. This direction will be reached using information provided by applicants, the Welsh Government’s land use records, screening criteria listed in Schedule 3 to the EIA Regulations, relevant guidance, and any information provided by Natural Resources Wales (NRW), CADW, or other relevant bodies. PINS Wales must adopt a screening direction within 21 days of receiving a screening request.

Where the applicant considers that the development is EIA development, it is recommended that the applicant requests a \textit{scoping direction} with a statement confirming that they intend to prepare an ES, rather than requesting a screening direction.

A3.11. Even where a DNS is not EIA development, certain environmental information may still be required with the application, including for example a flood risk assessment, a landscape and visual impact assessment, or information on the historic environment.

\textbf{Information to be provided with a screening request}

A3.12. The minimum information that applicants must provide with a screening request for a DNS is set out in the EIA Regulations\textsuperscript{8}. This includes a plan, a brief description of the nature and purpose of the development, a description of its possible effects on the environment, and a statement that the request is made in relation to a DNS.

A3.13. In addition, PINS Wales requests that the following information is shown on the plan:

- the proposed DNS site boundary (identified by a red line);
- any permanent land take required for the proposed development;
- any temporary land take required for construction, including construction compounds;
- any existing infrastructure which would be retained or upgraded for use as part of the proposed development and any existing infrastructure which would be removed; and

\textsuperscript{7} Regulation 28 of the EIA Regulations.
\textsuperscript{8} Regulation 28 of the EIA Regulations.
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- features including planning constraints and designated areas on and around the site, such as national parks or Sites of Special Scientific Interest.

A3.14. In dealing with the description of the development and its possible effects on the environment, applicants should:

- set out the information using the headings in Schedule 3 to the EIA Regulations, being:
  - characteristics of the development;
  - location of the development; and
  - characteristics of the potential impacts;
- ensure that all aspects of the environment likely to be significantly affected by the development are addressed.

Scoping

A3.15. Before submitting an application for a DNS, an applicant may ask PINS Wales for a formal **scoping direction** on the information to be included in the ES. PINS Wales must adopt a scoping direction within 5 weeks of receiving a scoping request, or such longer period as may be reasonably required.

A3.16. The scoping direction will set out:

- topics to be covered in the ES,
- identified constraints,
- comments on the methodology proposed (including bodies to consult), and
- cumulative developments identified.

A3.17. Before adopting a scoping direction PINS Wales must consult the statutory consultees. Statutory consultees for the EIA of DNS applications are defined in Regulation 2 of the EIA Regulations as:

- any authority, body or person which PINS Wales are required to consult by virtue of article 22 of the 2016 Order;
- any body which PINS Wales is required to consult, or would, if an application for planning permission for the development in question were before them, be required to consult by virtue of article 14 of the 2012 Order (consultations before the grant of permission) or of any direction under that article;

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9 Regulation 30 of the EIA Regulations.
• the following bodies:
  o any principal council for the area where the land is situated, if not the relevant planning authority;
  o the Natural Resources Body for Wales;
  o other bodies designated by statutory provision as having specific environmental responsibilities and which PINS Wales consider are likely to have an interest in the application.

A3.18. There is no requirement for an applicant to request a scoping direction, but PINS Wales strongly advises applicants to do so. In order to gain the most benefit from the process, applicants should request a scoping direction once there is:

• sufficient certainty about the description of the proposed development, and
• sufficient understanding of the main elements of the proposed development likely to have a significant environmental effect.

A3.19. Applicants should be aware that PINS Wales and statutory consultees will only be able to provide high level comments where multiple and varied design and layout options remain under consideration (for example a number of route corridors associated with a proposed linear development).

A3.20. In preparing the scoping direction, PINS Wales will take into account the specific characteristics of the development, and the environmental features likely to be affected by the development.10 The scoping direction will include any consultation responses received in relation to the scoping request, comments on the scope of the ES, and comments on the methodology proposed (including suggested consultation).

Applicant’s consultation and surveys before submitting a scoping request

A3.21. Prior to submitting a scoping request, applicants are encouraged to undertake their own informal consultation with the prescribed consultation bodies, or others, to inform the scoping request (e.g. by identifying and consulting on preferred sites or solutions prior to requesting a scoping direction). PINS Wales recommends that applicants consider carefully the timing and nature of any informal consultation exercise to ensure that there is no confusion with the formal scoping consultation period. Applicants will also need to ensure they have adequate time to undertake relevant surveys, some of which may only be undertaken at particular times of the year, and therefore they should consider whether there is a need for undertaking surveys before submitting a screening or scoping request.

10 Regulation 13(6) of the EIA Regulations.
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Information to be provided with a scoping request

A3.22. The minimum information that the applicant must provide with a scoping request is the same minimum information that must be provided with a screening request.\(^\text{11}\)

A3.23. Applicants should provide their scoping request in the form of a **scoping report**. This document should contain all information required by the Regulations\(^\text{12}\) to make a scoping request, plus the following additional information:

- an outline of the main alternatives considered and the reasons for selecting a preferred option;
- results of desktop and baseline studies where available;
- a record of consultation undertaken with relevant bodies (including any public engagement) to date;
- referenced plans presented at an appropriate scale to convey clearly the information and all known aspects associated with the proposal;
- guidance and best practice to be relied upon, and whether this has been agreed with the relevant bodies (for example the statutory nature conservation bodies or local authorities) together with copies of correspondence to support these agreements;
- methods used or proposed to be used to assess impacts and the significance criteria framework used;
- any mitigation proposed and the extent to which these are likely to reduce impacts;
- where impacts from consequential or cumulative development have been identified, how applicants intend to assess these impacts in the ES (for example, a high level assessment of the grid connection where this does not form part of the proposed development for a power station);
- an indication of any European designated nature conservation sites that are likely to be significantly affected by the proposed development and the nature of the likely significant impacts on these sites;
- key topics covered as part of applicants’ scoping exercise; and
- an outline of the structure of the proposed ES.

A3.24. The elements of the proposed development likely to have a significant environmental effect should be identified. Where uncertainty remains, the applicant should provide as much detail as possible or assume the worst case (e.g. maximum dimensions of a building or feature).

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11 Regulation 30(2) of the EIA Regulations.
12 Ibid.
Procedural Guidance

Scoping out topics from the EIA

A3.25. The process of scoping assists in defining the key topic areas and information to be included in the ES and can identify where matters could be scoped out of further assessment, if there are no likely significant environmental effects.

A3.26. Where the applicant wishes to scope out matters, justification should be provided, preferably supported by evidence of agreement with the relevant consultation bodies.

A3.27. PINS Wales will determine whether matters may be scoped out, having taken into consideration the information provided in the applicant’s scoping report and the comments provided by both the prescribed and non-prescribed consultees.

A3.28. Applicants should note that matters are not scoped out unless specifically confirmed as being scoped out by PINS Wales in the scoping direction. Whilst PINS Wales may not agree to scope out certain topics or matters within the scoping direction on the basis of the information available at the time, this does not prevent applicants from subsequently agreeing with the relevant consultees to do so.

A3.29. PINS Wales acknowledges that the scope of the EIA will change as the design of the proposed development progresses. The scoping direction can only respond to the information available at that time. Therefore, it will be reasonable for applicants to refine topics within the ES. This should result in a more focussed ES. To support with this, PINS Wales can provide ongoing pre-application advice.

Requests for additional information

A3.30. If sufficient information has not been provided with a screening or scoping request, PINS Wales may request additional information\(^\text{13}\) (e.g. where there are inconsistencies between the development as identified on the plans and the description of development).

A3.31. The formal request for additional information will specify how this information should be presented. The applicant should acknowledge any request received and indicate when they intend to provide the additional information to PINS Wales. Where additional information is requested, the relevant statutory time periods\(^\text{14}\) are suspended until the additional information is received to the satisfaction of PINS Wales.

\(^{13}\) Regulations 6(3) and 30(4) of the EIA Regulations for screening and scoping requests respectively.

\(^{14}\) The 21 day timeframe for screening prescribed under Regulation 6(6) and the 5 week timeframe for scoping prescribed under Regulation 30(7) of the EIA Regulations.


**Consultation on a draft Environmental Statement**

A3.32. Applicants are required to carry out formal pre-application consultation on the proposed DNS in advance of submission. Applicants should use this stage of the process to give consultees, including members of the public, an opportunity to comment on a draft Environmental Statement (ES). If data is yet to be collected, this should be noted in the draft ES.

As notification must include either a screening direction or a statement confirming that an ES is required in relation to the proposed development, the formal pre-application consultation period cannot start until it has been confirmed that the DNS is, or is not, an EIA development.

A3.33. Applicants should allow enough time to consider and respond to comments received on the draft ES, including, if necessary, undertaking additional surveys and analysis. Any adjustments or changes to the ES as a result of the consultation should be recorded in the Consultation Report (see Appendix 8).

**Non-Technical Summary (NTS)**

Applicants must include an NTS as part of their Environmental Statement. This will be particularly useful to local residents and the community council. Accordingly the applicant is encouraged to make the NTS available in both Welsh and English.

**Submission and Examination**

**Re-screening**

A3.34. Prior to submission of the DNS application, where PINS Wales have directed that the proposed development is not EIA development, but subsequently new information becomes available that may affect whether the proposal is EIA development, or where the proposed development itself changes to an extent that may affect the screening direction, applicants should submit a new screening request.

A3.35. Similarly, if a DNS is submitted and it is apparent that subsequent information material to the screening decision has become available, PINS Wales will re-screen the proposed development before the application is validated. In such cases, it would be helpful if applicants submit a statement explaining why they consider that any changes would not result in significant effects.

**Practical matters: Submission**

For information on how to submit Environmental Statements as part of a DNS application, please see [Chapter 3](#) (Submission).
A3.36. If the re-screening determines that the application is EIA development, an ES will be required. Consequently PINS Wales will not validate the DNS application until an ES is provided by the applicant.

Validation – adequacy of the ES

A3.37. Where the DNS is an EIA development, PINS Wales will have 42 days\(^\text{15}\) to determine whether an application is valid. During the validation stage, PINS Wales will check the ES for adequacy. To be considered valid, an application for an EIA DNS must include an adequate ES\(^\text{16}\).

A3.38. Where PINS Wales is of the opinion that the ES should contain additional information in order to be an ES (i.e. that the ES is not adequate), PINS Wales will notify the applicant and the applicant must provide that additional information\(^\text{17}\). PINS Wales will consequently consider that they have not received a valid application.

In order to support the validity of a DNS application at submission, early engagement on the scope and content of the ES is encouraged by PINS Wales. This will help ensure that the submitted ES is adequate.

In order to demonstrate that topics have not simply been overlooked, where topics are scoped out prior to submission of the DNS application, the ES should still identify these topics and explain the reasoning and justification for the approach taken.

Further matters may be scoped out of the ES following a scoping direction being made. Where this is the case, evidence must be provided to justify this approach, including evidence of agreement with the relevant statutory body. This should be explained fully in the ES.

Examination

A3.39. Where a DS application is submitted without an ES, and new evidence comes to light during the examination that suggests that the development is EIA development, the Inspector will notify the parties that an ES is required. During the examination, the Inspector will also have the power to request further information under Regulation 22 of the EIA Regulations. In either of these circumstances, the examination timetable will be suspended\(^\text{18}\) until the necessary information has been received.

\(^\text{15}\) 28 days for non-EIA development.
\(^\text{16}\) Regulation 7 of the EIA Regulations.
\(^\text{17}\) Regulation 22(1) of the EIA Regulations.
\(^\text{18}\) Regulation 11(e) of the Developments of National Significance (Wales) Regulations 2016.