

The Welsh Government's Legislative Consent Memorandum on the Planning and Infrastructure Bill

May 2025



1. Background

1. The Planning and Infrastructure Bill¹ (the Bill) was introduced into the House of Commons and had its First Reading on 11 March 2025. It is sponsored by the Ministry of Housing, Communities and Local Government.
2. The Explanatory Notes to the Bill as introduced state:

*"The Planning and Infrastructure Bill ("the Bill") will speed up and streamline the delivery of new homes and critical infrastructure, supporting delivery of the government's Plan for Change milestones of building 1.5 million safe and decent homes in England and fast-tracking 150 planning decisions on major economic infrastructure projects by the end of this Parliament. It will also support delivery of the government's Clean Power 2030 target by ensuring that clean energy projects are built as quickly as possible."*²

3. The long title to the Bill states that it is a Bill to:

*"Make provision about infrastructure; to make provision about town and country planning; to make provision for a scheme, administered by Natural England, for a nature restoration levy payable by developers; to make provision about development corporations; to make provision about the compulsory purchase of land; to make provision about environmental outcomes reports; and for connected purposes."*³

4. Committee stage in the House of Commons began on 24 April 2025. At the time this report was agreed, the Public Bill Committee was expected to report to the House by Thursday 22 May 2025.

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5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant Bill before the UK Parliament makes provision in relation to Wales that has regard to devolved matters.

¹ The Planning and Infrastructure Bill, as introduced

² Explanatory Notes to the Bill, as introduced

³ The Planning and Infrastructure Bill, as introduced

6. On 26 March 2025, Rebecca Evans MS, the Cabinet Secretary for Economy, Energy and Planning (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum in respect of the Bill (the Memorandum).⁴

7. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Climate Change, Environment and Infrastructure Committee should report on the Memorandum by 6 June 2025.⁵

Provisions for the which the Senedd's consent is required

8. The Welsh Government's assessment is that consent is required for:

- Part 1 Infrastructure:
 - Clause 4(3) to (5) (Applications for development consent: consultation);
 - Clause 24 (Use of forestry estate for renewable energy);
 - Clause 25 (Fees for certain services);
 - Clause 28 (Procedure for certain orders and schemes);
 - Clause 29 (Compulsory acquisition powers to include taking of temporary possession);
 - Clause 30 (Replacement of model clauses with guidance);
 - Clause 31 (Removal of special procedure for projects of national significance);
 - Clause 32 (Duty to hold inquiry or hearing);
 - Clause 33 (Costs of inquiries);
 - Clause 34 (Deadlines for decisions);
 - Clause 35 (Publication of decisions and time for bringing challenge);

⁴ Welsh Government, Legislative Consent Memorandum on the Planning and Infrastructure Bill, 26 March 2025

⁵ Business Committee, Timetable for consideration: Legislative Consent Memorandum on the Planning and Infrastructure Bill, April 2025

- Clause 36 (Fees for certain services);
- Clause 37 (Disapplication of heritage regimes);
- Clause 38 (Deemed consent under marine licence);
- Clause 41 (Power to make consequential amendments);
- Clause 42 (Fees for applications for harbour orders).
- Part 5 Compulsory Purchase:
 - Clause 83 (Electronic service etc);
 - Clause 84 (Required content of newspaper notices);
 - Clause 85 (Confirmation by acquiring authority orders with modifications);
 - Clause 86 (General vesting declarations: expedited procedure);
 - Clause 87 (General vesting declaration: advancement of vesting by agreement);
 - Clause 89 (Home loss payments: exclusions);
 - Clause 90 (Temporary possession of land in connection with compulsory purchase);
 - Clause 91 (Amendments relating to section 14A of the Land Compensation Act 1961);
 - Clause 92 (New powers to appoint an inspector).

9. With regards to the UK Government's views on the need for consent, the Cabinet Secretary states in the Memorandum:

"Matthew Pennycook MP, Minister of State for Housing and Planning, has written to me to advise in the UK Government's view the consent of the Senedd is needed for the following clauses:

- *Part 1 – Clauses 24, 25, 29, 30 to 39, 41 and 42.*
- *Part 5 – Clauses 83 to 87 and 89 to 92.*

In the view of the UK Government consent of the Senedd is not required for the following clauses:

- Part 1 – Clauses 1 to 8 which make provision in respect to NSIPs and clauses 9 to 23 as they relate to the reserved matters in relation to NSIP and electricity.*
- Part 1 – Clauses 26 to 28 as they do not have any practical application in Wales except for the very limited application for highways that are the responsibility of the Secretary of State.*
- Part 1 – Clause 40 as it only applies to Scotland.*
- Part 1 – Clause 43 as it only applies to England.*
- Part 2 – Clauses 44 to 47 as they only apply to England.*
- Parts 3 and 4 – Clauses 48 to 82 as they only apply to England.*
- Part 6 – Clause 93 as the provision only changes the extent of an existing power exercisable in some circumstances by Wales but does not amount to a modification of executive competence.”⁶*

10. The Cabinet Secretary states that, while she broadly agrees with the UK Government's devolution analysis, “there is a divergence between my view, and the view of the UK Government on the need for Senedd consent on a small number of provisions in the Bill.” The Cabinet Secretary goes on to state:

“I am of the view clause 4(3) to (5) (Applications for development consent: consultation) also require legislative consent from the Senedd. This is on the basis that it has an impact on the functions of devolved Welsh Authorities and therefore has regard to a devolved matter. It is for this reason this Legislative Consent Memorandum covers this clause. I have also included clause 28 within this Legislative Consent Memorandum until discussions with UK Government officials on the application of the clause to England only have

⁶ Memorandum, paragraphs 57 and 58

concluded. I have written Matthew Pennycook MP on these matters.”⁷

11. The Cabinet Secretary adds that she disagrees with the UK Government's view that legislative consent should be sought for clause 39 of the Bill. The Cabinet Secretary states that “The provision relates to England only and has no effect in Wales, therefore it has not been included in the LCM.”⁸

The Welsh Government's position

12. At paragraph 61 of the Memorandum the Cabinet Secretary states “The Bill contains provisions that could benefit the people of Wales.”

13. As regards the provisions in clause 4(3) to (5) of the Bill, which relates to Nationally Significant Infrastructure Projects (NSIP), the Cabinet Secretary states in the Memorandum:

- The changes “will mean that specified public authorities including the Welsh Ministers, local authorities and other devolved Welsh authorities, will have to have regard to guidance issued by the Secretary of State when responding to a consultation or making representations about an application for orders granting development consent under the 2008 Act.”⁹
- “Welsh bodies already participate in the UK Government NSIP process, and these clauses are similar to that found in the Welsh system.”¹⁰
- These provisions “will help ensure Welsh public authorities engage and provide expert advice in a meaningful and timely manner. This will help shape development and expediate decision making, providing certainty on major development that affects Wales.”¹¹

14. Regarding clause 24 of the Bill (the use of forestry estate for renewable energy), the Cabinet Secretary states in the Memorandum:

- “In Wales, Natural Resource Wales (NRW) can already dispose of parts of the Welsh Government Woodland Estate (WGWE) for the purposes of renewable energy (e.g. to construct windfarms). The Welsh Ministers’

⁷ Memorandum, paragraph 59

⁸ Memorandum, paragraph 60

⁹ Memorandum, paragraph 11

¹⁰ Memorandum, paragraph 63

¹¹ Memorandum, paragraph 63

consent is required for this, under an agreement made under s.83 of the Government of Wales Act 2006. However, NRW cannot currently develop its own renewable energy projects on the WGWE. The current drafting of clause 24 provides that NRW may use its new powers under clause 24 to obtain funds for its activities.”¹²

- “The clause gives powers to the Welsh Ministers to make regulations that provide that NRW may not exercise their powers under this clause without the consent of the Welsh Ministers. The regulations can make provision about the process to seek and give consent and to provide for consent to be subject to conditions. The regulations would be made under the negative procedure.”¹³
- “While I am supportive of the provision conferring powers on NRW, further engagement is needed with UK Government to ensure these provisions will align with Welsh Government policy in this area.”¹⁴

15. In relation to clauses 25, 28 and 29, which make amendments to the *Highways Act 1980* (the 1980 Act), in the Memorandum the Cabinet Secretary states:

- The insertion of a new section into the 1980 Act, via clause 25 of the Bill, that will follow existing section 218A provides the Welsh Ministers with a regulation-making power (subject to the negative procedure) to stipulate public bodies who are allowed to charge for their services provided in connection with orders and schemes made in relation to road projects under the 1980 Act.¹⁵
- The amendments to the 1980 Act made by clause 28 will enable a consistent approach to handle various 1980 Act orders in England, and the clause “currently inadvertently applies to Wales and discussions are ongoing with UK Government officials to ensure the provision applies to England only”. This is on the basis that once amendments are made to the 1980 Act by the Legislation (Procedure, Publication and Repeals) (Wales) Bill “it should be clear that this is the case. However, engagement with UK Government is taking place to explore whether

¹² Memorandum, paragraph 64

¹³ Memorandum, paragraph 15

¹⁴ Memorandum, paragraph 64

¹⁵ Memorandum, paragraph 18

the drafting of this clause can be improved or clarified to provide assurances that it has an England-only application".¹⁶

- Clause 29 amends section 250(8) of the 1980 Act and "introduces powers to temporarily possess and use land (for example for construction purposes) which allows a more proportionate approach to land access leading to a more reasonable and efficient approach along with better value for the scheme promoter".¹⁷

16. The Cabinet Secretary states that clauses 25 and 29 are "considered beneficial for the consenting of projects that fall outside the Infrastructure (Wales) Act 2024".¹⁸

17. As regards clauses 30 to 38 and 41, which make amendments to the *Transport and Works Act 1992* (TWA1992) the Cabinet Secretary states in the Memorandum that these clauses "align with the narrative and legal framework of the Infrastructure (Wales) Act 2024 Act to ensure the consenting process of Transport and Works Act 1992 Orders is as effective as possible"¹⁹. These clauses, amongst other things, provide the Welsh Ministers with:

- a power to issue guidance regarding the preparation of draft TWA1992 Orders (clause 30);
- a power of direction relating to costs of inquiries (clause 33);
- a consenting role should regulations made by the Secretary of State set rules regarding deadlines for decisions and those rules apply in relation to Wales (clause 34);
- a regulation-making power, subject to the negative procedure, to stipulate public bodies who are allowed to charge for the services provided to schemes with the TWA application process (clause 36).

18. Clause 41 also provides the Secretary of State with a regulation-making power that may amend an Act of Parliament or an Act or Measure of the Senedd. Such regulations may make amendments that are consequential to clauses 30 to 40. The draft affirmative procedure will apply should the regulation amend primary legislation.

¹⁶ Memorandum, paragraphs 19 and 66

¹⁷ Memorandum, paragraphs 20 and 65

¹⁸ Memorandum, paragraph 65

¹⁹ Memorandum, paragraph 21

19. In the Memorandum, the Cabinet Secretary states that the changes made by clauses 30 to 38 and 41:

“... will, amongst other things; clarify and simplify the law, provide for cost recovery mechanisms to enable those who participate in the process the ability to recover their costs, and ensure a level playing field to ensure that users of the system are not disadvantaged in Wales. These all ensure projects that remain below the new threshold set in the Infrastructure (Wales) Act 2024 are consented using a more modern framework.

While I am supportive of the provision to deem a marine licence under clause 38, I am seeking reassurance from UK Government there is no unintended consequence in the offshore region.”²⁰

20. On clause 42 (Fees for applications for harbour orders), in the Memorandum the Cabinet Secretary states:

“Clause 42 amends paragraphs 7 and 9, includes a new paragraph in Schedule 3 and amends section 54 of the Harbours Act 1964. The proposed changes would remove the current provisions in paragraph 7(1) (c) in Schedule 3 of the Harbours Act. Fees would no longer be set out in published guidance by the Welsh Ministers as is the current situation. Instead, the Welsh Ministers would be provided with the power to make regulations relating to Harbour Revision Order application fees to be paid by the applicant.”²¹

21. At paragraph 69 of the Memorandum, the Cabinet Secretary adds:

“The proposals are considered acceptable as they would provide the Welsh Ministers with the power to set flexible and proportionate fee schedules for harbour order applications. Importantly, commencement provisions in the Bill allow the Welsh Ministers to retain existing powers to charge fees under the Harbours Act 1964 until new fee regulations are made.”

²⁰ Memorandum, paragraphs 67 and 68

²¹ Memorandum, paragraph 35

22. Finally, in relation to clauses 83 to 87 and 89 to 92 (Compulsory Purchase Power), in the Memorandum the Cabinet Secretary states that these clauses “impact on the Welsh Ministers in their capacity as both a confirming authority and as an acquiring authority and it is therefore considered that they modify the functions of the Welsh Ministers”.²²

23. Clause 89 includes powers that enable the Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) to amend the list of relevant notices and orders by regulations (subject to the negative procedure).

24. At paragraph 70 of the Memorandum the Cabinet Secretary states that these clauses “are considered to be acceptable to help speed up the delivery of affordable housing, infrastructure and development for the public good”.

25. At paragraph 6 of the Memorandum the Cabinet Secretary states:

“UK Government and Welsh Government officials have been in regular contact during the development of the Bill. Engagement will continue at an official and Ministerial level where necessary.”

26. As regards financial implications, the Cabinet Secretary states in the Memorandum:

“The financial assessment of the Bill is yet to be completed by the UK Government and will be published during the Bill's passage through Parliament.”²³

27. The Cabinet Secretary concludes:

“It is the view of the Welsh Government that it is appropriate to deal with the majority of these provisions, as drafted on introduction, in this UK Bill. They will help to streamline and simplify the processes associated with the delivery of infrastructure and development, including housing, in Wales.

Whilst generally supportive of these provisions, I am seeking further engagement with UK Government on the following

²² Memorandum, paragraph 39

²³ Memorandum, paragraph 71

provisions before I am able to recommend the Senedd gives consent to them:

- *Clause 24 (Use of forestry estate for renewable electricity);*
- *Clause 28 (Procedure for certain orders and schemes); and*
- *Clause 38 (Deemed consent under marine licence).*

Engagement will continue with UK Government on these clauses to ensure a positive outcome is reached.”²⁴

28. The Cabinet Secretary states in the Memorandum that she will update the Senedd “as appropriate once further discussions have taken place with the UK Government”.²⁵

2. Committee consideration

29. We considered the Memorandum at our meeting on 6 May 2025.²⁶

30. We note that the Cabinet Secretary laid a supplementary legislative consent memorandum (Memorandum No. 2) on 15 May 2025.²⁷ We will consider and report on Memorandum No. 2 in due course.

31. We considered and agreed our report at our meeting on 19 May 2025.²⁸

Our view

Legislative consent

32. We note the Welsh Government’s assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

33. We also note the position of the UK Government as regards consent.

²⁴ Memorandum, paragraphs 72 to 74

²⁵ Memorandum, paragraph 75

²⁶ Legislation, Justice and Constitution Committee, 6 May 2025

²⁷ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Planning and Infrastructure Bill, May 2025

²⁸ Legislation, Justice and Constitution Committee, 19 May 2025

Conclusion 1. We agree with the Welsh Government's assessment, as set out in the Memorandum, of the provision within the Bill which requires the consent of the Senedd in accordance with Standing Order 29.

34. However, we also consider that clauses 83 to 87 and 89 to 92 of the Bill have an impact on the Welsh Ministers in their capacity as both a confirming authority and as an acquiring authority.

Conclusion 2. We consider that clauses 83 to 87 and 89 to 92 require notification to the Senedd under Standing Order 30.1, as these provisions modify the functions of the Welsh Ministers.

Ongoing matters of concern

35. We note that, at paragraph 6 of the Memorandum, the Cabinet Secretary states that UK and Welsh government officials have been in regular contact during the development of the Bill. It is not clear to us what this statement means in terms of the role the Welsh Government played in discussing the impact of the Bill on devolved matters with UK Government counterparts.

36. We note that the Cabinet Secretary has concerns that clause 24 (use of forestry estate for renewable energy) may not align with Welsh Government policy. We also note that, as regards clause 38 (deemed consent under marine licence), the Cabinet Secretary has requested "reassurance from UK Government there is no unintended consequence in the offshore region".

37. In addition, we acknowledge the Cabinet Secretary's statement that clause 28 (procedure for certain orders and schemes) "currently inadvertently applies to Wales", and this is because of amendments being made to the 1980 Act by the Legislation (Procedure, Publication and Repeals) (Wales) Bill. We note that the Cabinet Secretary hopes that "the drafting of this clause can be improved or clarified to provide assurances that it has an England-only application".

38. Given that there are these ongoing matters of concern to the Cabinet Secretary, we believe clarity should be provided to the Senedd on when the Welsh Government became aware of the UK Government's legislative proposals that are being taken forward in the Bill, and when the Cabinet Secretary became aware of the issues that have materialised as regards clauses 24, 28 and 38.

Recommendation 1. The Cabinet Secretary should confirm the date on which:

- the Welsh Government became aware of the UK Government's legislative proposals that are being taken forward in the Bill;
- discussions on the Bill began with the UK Government;
- the Cabinet Secretary became aware of the issues that have materialised as regards clauses 24, 28 and 38.

Recommendation 2. The Cabinet Secretary should explain how the Bill's drafting was influenced by the Welsh Government.

Delegated powers

39. We note that the Bill contains a large number of delegated powers.

40. It is our understanding that new delegated powers are being given to the Welsh Ministers, as follows:

- Clause 24 gives powers to the Welsh Ministers to make regulations that provide that Natural Resources Wales may not exercise its powers under this clause without the consent of the Welsh Ministers.
- Clause 25 provides the Welsh Ministers with a regulation-making power to stipulate public bodies who are allowed to charge for their services provided in connection with orders and schemes made in relation to road projects under the 1980 Act.
- Clause 30 gives the Welsh Ministers a power to issue guidance regarding the preparation of draft TWA1992 Orders.
- Clause 33 gives the Welsh Ministers a power of direction relating to costs of inquiries.
- Clause 36 provides a regulation-making power to stipulate public bodies who are allowed to charge for the services provided to schemes with the TWA application process.
- Clause 42 provides the Welsh Ministers with the power to make regulations relating to Harbour Revision Order application fees to be paid by the applicant.
- Clause 89 provides powers that enable the Welsh Ministers to amend the list of relevant notices and orders by regulations.

41. We note that, in addition to new delegated powers being given to the Welsh Ministers, the Bill also delegates powers to the Secretary of State to act in devolved areas.

42. For example, we note that the Secretary of State will obtain powers to issue guidance that affects devolved matters (clauses 4(3) to (5)), and clause 34 will also enable the Secretary of State to set rules regarding deadlines for decisions via regulations. We acknowledge that clause 34 also provides the Welsh Ministers with a consenting role should the regulations setting rules apply in relation to a devolved matter in Wales.

43. In addition, we note that clause 41 of the Bill provides the Secretary of State with a regulation-making power that may amend an Act of Parliament or an Act or Measure of the Senedd. We acknowledge that such regulations may only make amendments that are consequential to clauses 30 to 40, and that the draft affirmative procedure will apply should the regulations amend primary legislation.

Recommendation 3. The Cabinet Secretary should clarify and confirm our understanding, as set out in paragraphs 40 to 43 of our report, of the precise number of powers in the Bill delegated to the Welsh Ministers, as well as the number delegated to the Secretary of State to act in devolved areas and how many of those require the consent of the Welsh Ministers before being used.

The Bill's interaction with the Welsh Government's proposals for the consolidation of planning law in Wales

44. In the Welsh Government's 'The future of Welsh law: A programme for 2021 to 2026 Annual Report for 2023-24'²⁹, the Counsel General and Minister for Delivery stated that progress has continued on consolidating the main Acts that provide the legislative framework for the planning system in Wales.

45. On 4 February 2025, the Counsel General told the Committee that the Government's intention is that these Consolidation Bills will be introduced to the Senedd in September 2025.³⁰

46. The Memorandum does not comment on the extent to which the Bill may impact on the Welsh Government's own proposals to consolidate the existing planning law as it applies in Wales.

²⁹ Welsh Government, The future of Welsh law: A programme for 2021 to 2026. Annual Report 2023-2024, December 2024

³⁰ Letter from the Counsel General and Minister for Delivery, 4 February 2025

Recommendation 4. The Cabinet Secretary should, in consultation with the Counsel General and Minister for Delivery, confirm whether the Bill has implications for the Welsh Government's proposals and scheduling to consolidate the existing planning law as it applies in Wales.