

# **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Planning and Infrastructure Bill**

June 2025



# 1. Background

**1.** The Planning and Infrastructure Bill<sup>1</sup> (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."*<sup>2</sup>

**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."*<sup>3</sup>

**4.** Committee stage in the House of Commons began on 24 April 2025 and concluded on 22 May 2025. The Bill had its Report stage and Third reading over two days on 9 and 10 June 2025. First reading in the House of Lords took place on 12 June 2025. At the time this report was agreed, Second reading was scheduled to take place on 25 June 2025.

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<sup>1</sup> The Planning and Infrastructure Bill, as introduced

<sup>2</sup> Explanatory Notes to the Bill, as introduced

<sup>3</sup> The Planning and Infrastructure Bill, as introduced

## **The Welsh Government's Legislative Consent Memorandum**

- 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.
- 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).<sup>4</sup>
- 7.** We published our report on the Memorandum (our first report) on 28 May 2025.<sup>5</sup>
- 8.** Paragraphs 8 to 11 of our first report set out the provisions of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent.
- 9.** Paragraphs 12 to 27 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum.
- 10.** Our first report contained two conclusions and four recommendations.

## **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)**

- 11.** On 15 May 2025, the Cabinet Secretary laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill.<sup>6</sup>
- 12.** The Business Committee agreed that the Legislation, Justice and Constitution Committee (the Committee) and the Climate Change, Environment and Infrastructure (CCEI) Committee should report on the Memorandum by 27 June 2025.<sup>7</sup>

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

<sup>5</sup> Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memorandum on the Planning and Infrastructure Bill, May 2025

<sup>6</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Planning and Infrastructure Bill, May 2025

<sup>7</sup> Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Planning and Infrastructure Bill, May 2025

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## **Provisions for the which the Senedd's consent is required**

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**13.** Memorandum No. 2 relates to amendments tabled by the UK Government on 23 and 24 April 2025 during Committee Stage in the House of Commons.

**14.** At paragraphs 8 to 29 of Memorandum No. 2, the Cabinet Secretary sets out details of the amendments for which the Senedd's consent is required, and provides an update on the Welsh Government's position since the publication of the Memorandum. The Cabinet Secretary states consent is required for:

- Gov NC43 which adds a new clause "Changes to, and revocation of development consent orders";
- Gov NC44(a), (b) and (e) which adds a new clause "Applications for development consent: removal of certain pre-application requirements";
- Gov NC45 which adds a new clause "Applications for development consent: changes related to section (Applications for development consent: removal of certain pre-application requirements)".<sup>8</sup>

**15.** As regards Gov NC44, in Memorandum No. 2 the Cabinet Secretary states:

- The new clause omits a range of sections from the *Planning Act 2008* (the 2008 Act), in particular sections 42 to 45, section 47, and section 49, which require a person who proposes to apply for development consent to consult particular people about the proposed application.
- The removal of sections 42 and 44 of the 2008 Act would remove the duty to consult the Welsh Ministers, Welsh public bodies (such as Natural Resources Wales), and local authorities where the relevant land is within its area.
- The Welsh Ministers and other devolved Welsh authorities are specified in regulations made under section 42 of the 2008 Act, and the revocation of these sections will directly affect the functions of the Welsh Ministers and Devolved Welsh Authorities.<sup>9</sup>

**16.** In a letter to the Committee and to the CCEI Committee on 28 May 2025, the Cabinet Secretary said:

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<sup>8</sup> Memorandum No. 2, paragraph 10

<sup>9</sup> Memorandum No. 2, paragraphs 12 to 15. See also paragraph 32.

*"I am writing to you to update you regarding clause 4(3) of the Bill as introduced. This clause, amongst others, was included in the LCM I laid on 26 March. However, recently tabled Government amendment, Gov 58, proposes to remove clause 4(3) from the Bill. This amendment was not included in the SLCM I recently laid as it is consequential on amendment Gov NC44 and it did not meet the test as set out in Standing Order 29.2. This letter provides clarity on the resulting position. (...)*

*The LCM laid on 26 March included clause 4(3) as a relevant provision as the provisions would affect the functions of the Devolved Welsh Authorities and therefore requires the consent of the Senedd. The change by Government amendment Gov 58 removes this duty at the pre-application stage as a consequence of amendment Gov NC44 which removes that statutory pre-application consultation stage.*

*The requirement for Devolved Welsh Authorities to have regard to guidance issued by the Secretary of State is retained in clause 4(4) and (5) of the Bill. (...) Both of these clauses were also included in the LCM I laid on 26 March. For the avoidance of doubt, these clauses remain in the Bill and still require the consent of the Senedd."<sup>10</sup>*

**17.** As regards Gov NC45, in Memorandum No. 2 the Cabinet Secretary states:

- The new clause makes changes related to the omission of pre-application consultation requirements in relation to Gov NC44. The effect of these amendments place a new function on the local planning authority who will receive the information specified in the new clause.
- In addition, section 50 of the 2008 Act is to be substituted with a new provision titled "Guidance about pre-application steps", which will require applicants to have regard to any guidance issued by the Secretary of State to assist them with complying with section 48 (duty to publicise) and provides that the Secretary of State is to issue guidance setting out best practice in terms of steps that applicants might take before submitting any applications.

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<sup>10</sup> Letter from the Cabinet Secretary for Economy, Energy and Planning, 28 May 2025

- She will be “seeking reassurance from the UK Government that the NSIP<sup>11</sup> regime will still function on the basis of a front-loaded approach with a focus on high-quality early, meaningful and constructive engagement and consultation and that this will be reflected in the guidance that is issued”.
- The new clause amends the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572), as a consequence of amendment NC44, to remove the requirement to provide certain information to consultees.
- The provisions proposed by Gov NC45 would confer, remove or modify the functions of Devolved Welsh Authorities.<sup>12</sup>

**18.** As regards Gov NC43, in Memorandum No. 2 the Cabinet Secretary states:

- The new clause amends Schedule 6 to the 2008 Act, the effect of which would be to repeal the procedure for making non-material changes to development consent orders (DCOs) granted under that Act.
- Subsection (6) of the new clause makes consequential amendments to other legislation, including paragraph 8(3)(b)(i) of Schedule 7 to the *Wales Act 2017* (the 2017 Act). The 2017 Act devolved consenting functions for certain electricity generating stations to the Welsh Ministers. These projects were previously NSIPs and were granted DCOs by the Secretary of State. Schedule 7 to the 2017 Act makes transitional provision for the Welsh Ministers to deal with any changes to DCOs that would now be the responsibility of the Welsh Ministers (legacy DCOs). The process for making any changes is set out in the 2008 Act, as modified by paragraph 8 of Schedule 7 to the 2017 Act. The new clause amends Schedule 7 to the 2017 Act as a consequence of these changes and the omission of paragraph 2 of the Schedule 6 to the 2008 Act.
- Although the function of deciding DCOs is reserved, the amendments proposed by amendment Gov NC43 would confer, remove or modify the functions of the Welsh Ministers in deciding any legacy DCO's in non-devolved areas.

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<sup>11</sup> Nationally Significant Infrastructure Projects are large scale major development projects in England or Wales which fall into the following categories: energy, transport, waste, waste water, and water.

<sup>12</sup> Memorandum No. 2, paragraphs 16 to 22 and 35.

- The new clause could affect a small number of projects in Wales, however, as the proposal provides a simplified process for making changes to DCOs, “the provisions will provide potential benefits for stakeholders” and the change “would align with our overall approach to providing a modern consenting process for infrastructure”.<sup>13</sup>

**19.** With regards to the UK Government's views on the need for consent, the Cabinet Secretary states in Memorandum No. 2:

*“Mathew Pennycook MP, Minister of State for Housing and Planning, wrote to me on 2 May 2025 to advise of the UK Government's view on the need for consent of the Senedd in relation to the additional measures added to Part 1 of the Bill. The UK Government consider that, with the exception of Gov NC43, the provisions relate to reserved matters and therefore do not engage the legislative consent process.”<sup>14</sup>*

**20.** The Cabinet Secretary believes that “the stronger argument is that amendments Gov NC43, Gov NC44 and Gov NC45 make provision that impact of the functions of Devolved Welsh Authorities and therefore require a legislative consent memorandum.”<sup>15</sup>

**21.** The Cabinet Secretary concludes:

*“In respect of new clause Gov NC44 and Gov NC45, it is appropriate to deal with these in a UK Bill as this relates to the UK consenting process for large scale infrastructure. This supplementary LCM is laid as the amendments confer, remove or modify the functions of Welsh public bodies in that process and I have written to the UK Government to understand the practical effects of the changes on both our bodies and the public. I await a response from the UK Government reassuring me that the associated guidance encourages a frontloaded approach before I can make a recommendation on consent in relation to clauses Gov NC44 and Gov NC45.*

*For new clause Gov NC43, the effect of the amendment is to confer, remove or modify the functions of the Welsh Ministers in their capacity as decision maker regarding changes to DCOs*

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<sup>13</sup> Memorandum No. 2, paragraphs 23 to 29 and 37

<sup>14</sup> Memorandum No. 2, paragraph 30

<sup>15</sup> Memorandum No. 2, paragraph 31

*which relate to devolved energy generating stations. As these consents were granted under the 2008 Act the process is reserved to the UK Government to make the amendments. Further, making amendments with a UK wide approach is appropriate and can only be done in a UK Bill. At this time, I recommend that the Senedd supports and gives its consent for Gov NC43.*<sup>16</sup>

## 2. Committee consideration

**22.** We considered Memorandum No. 2 at our meeting on 9 June 2025.<sup>17</sup>

**23.** We considered and agreed our report at our meeting on 16 June 2025.<sup>18</sup>

### Our view

#### Legislative consent

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**24.** We note the Welsh Government's assessment of the amendments to the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 2.

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

**Conclusion 1.** We continue to agree with the Welsh Government's assessment, as set out in the Memorandum and Memorandum No. 2, of the provisions (and amendments to those provisions) within the Bill which requires the consent of the Senedd in accordance with Standing Order 29; but this is subject to our views set out in conclusion 2.

**26.** We note that Gov NC43 and Gov NC44 modify the functions of the Welsh Ministers.

**Conclusion 2.** We consider that Gov NC43 and Gov NC44 require notification to the Senedd under Standing Order 30.1, as these provisions modify the functions of the Welsh Ministers.

**27.** We also note that the Cabinet Secretary is awaiting information from the UK Government about the practical effects of Gov NC44 and Gov NC45 on Welsh

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<sup>16</sup> Memorandum No. 2, paragraphs 40 and 41

<sup>17</sup> ~~Legislation, Justice and Constitution Committee~~, 9 June 2025

<sup>18</sup> ~~Legislation, Justice and Constitution Committee~~, 16 June 2025



public bodies and the public itself before she can make a recommendation on consent in relation to these new clauses.

**28.** We further note that, in relation to Gov NC43, the Cabinet Secretary states that “making amendments with a UK wide approach is appropriate and can only be done in a UK Bill” and, as such, she is recommending that the Senedd gives its consent to this new clause.

**29.** In agreeing with the Welsh Government that Gov NC44 requires the consent of the Senedd, and that it modifies the functions of the Welsh Ministers, we note the Cabinet Secretary's letter of 28 May in which she informs us that the UK Government's amendment 58 removes clause 4(3) from the Bill. We further note the Cabinet Secretary's statement that “This amendment was not included in the SLCM I recently laid as it is consequential on amendment Gov NC44 and it did not meeting the test as set out in Standing Order 29.2.”

### **Ongoing matters of concern**

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**30.** Our first report contained four recommendations relating to intergovernmental working on the Bill (recommendations 1 and 2), delegated powers in the Bill (recommendation 3), and the Bill's interaction with the Welsh Government's proposals for the consolidation of planning law in Wales (recommendation 4). We await the Cabinet Secretary's response to our first report.