Welsh Parliament
Climate Change, Environment, and Infrastructure Committee

Report on the Legislative Consent Memorandums for the Planning and Infrastructure Bill

June 2025

1. The Planning and Infrastructure Bill ("the Bill") was introduced into the House of Commons on 11 March 2025. The Bill is sponsored by the Ministry of Housing, Communities and Local Government.

2. The Welsh Government laid a Legislative Consent Memorandum (LCM) on the Bill before the Senedd on 26 March 2025. A supplementary Legislative Consent Memorandum ("Memorandum No.2") was laid on 15 May 2025.

Policy objectives

3. The UK Government's stated policy objectives for the Bill are to 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 also seeks to support delivery of the UK Government's Clean Power 2030 target by ensuring that clean energy projects are built as quickly as possible.

4. The Bill seeks to provide the following benefits, as stated at paragraph 3 of the LCM:

a. Provide for a faster and more certain consenting process for critical infrastructure and strengthen the policy framework around National Policy Statements.

b. Deliver a more efficient and predictable system for energy infrastructure projects, including:

i. Reforms to update the electricity grid connection process;

ii. Establishing a new cap and floor scheme to support the deployment of long duration electricity storage;

iii. Reforms to electricity infrastructure consenting in Scotland, to reduce system inefficiencies and insert elements of best practice;

iv. Establishing a bill discount scheme for those living closest to new electricity transmission infrastructure; and

v. Updating a process for offshore electricity transmission, by extending the generator commissioning clause period.

c. Streamline and improve the efficiency of delivering transport infrastructure projects, including:

i. Changing the process of street works approval in order to accelerate the installation of electric vehicle public charge points;

ii. Various reforms to the Transport and Works Act 1992 and Highways Act 1980 to streamline processes and accelerate delivery of projects; and

iii. Improving cost recovery for Harbour Revision Orders.

d. Introduce a more strategic approach to nature recovery in relation to development, enabling developers to fund restoration more efficiently through a new Nature Restoration Fund, whilst securing improved outcomes for the environment.

e. Improve certainty and decision-making increasing the capacity of local planning authorities by enabling the cost recovery of planning fees.

f. Unlock land and secure public value for large-scale investment through reforms to the compulsory purchase order process and compensation rules.

g. Strengthen development corporation powers for infrastructure delivery, including transport, and clarify and update development corporation remits and objectives.

h. Provide for the introduction of a strategic planning system for England.

Provisions in the Bill for which consent is required

Legislative Consent Memorandum (Memorandum Number 1)

5. In the LCM, the Welsh Government states that it is appropriate to deal with the majority of these provisions in the UK Bill. It explains that the provisions:

> *"will help to streamline and simplify the processes associated with the delivery of infrastructure and development, including housing, in Wales."*

6. The UK Government has written to Rebecca Evans MS, the Cabinet Secretary for Economy, Energy and Planning to advise that the UK Government has sought consent 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.

7. The Welsh Government's LCM at paragraph 59 states that it broadly agrees with the UK Government's devolution analysis. However, there is a divergence between the Cabinet Secretary, and the view of the UK Government on the need for Senedd consent on a small number of provisions in the Bill.

8. The Welsh Government is of the view clause 4(4) to 4(5) require Senedd consent. 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.

9. The Welsh Government has also included clause 28 within this LCM until discussions with UK Government officials on the application of the clause to England only have concluded. In addition, Welsh Government will engage with the UK Government on the following clauses before being 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).

Clause 4(4) – Applications for development consent

10. Clause 4(4) amends section 60 of the 2008 Act in relation to local impact reports. It provides that an authority producing a local impact report must have regard to any relevant

guidance issued by the Secretary of State. This would apply to a local authority in Wales where the development is in Wales.

Clause 4(5) – Applications for development consent

11. Clause 4(5) introduces a new section 96A into the 2008 Act to provide that a relevant public authority making any representations about an application must have regard to guidance issued by the Secretary of State. This also includes local authorities in Wales (by virtue of section 56(2)(b) of the 2008 Act) and the Welsh Ministers and other devolved Welsh authorities (by virtue of section 56(2)(a) of the 2008 Act).

Chapter 2 – Electricity Infrastructure – Electricity generation on forestry land

Clause 24 – Use of forestry estate for renewable energy:

12. Clause 24 amends the Forestry Act 1967 (by inserting a new section 3A after section 3) granting the appropriate forestry authority (in Wales this would be Natural Resources Wales ("NRW") certain powers. In respect of Wales, the purposes of the powers are to obtain funds for meeting the expenses for the activities of NRW and to facilitate or promote the use of renewable energy. 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.

Chapter 3 – Transport Infrastructure - Amendments to the Highways Act 1980

Clause 25 – Fees for certain services

13. This clause inserts a new section 281B into the Highways Act 1980. This section provides a new power for the Secretary of State in England and the Welsh Ministers in Wales to make provision in regulations for public authorities to charge applicants for their services provided in connection with orders and schemes made in relation to road projects under the Highways Act 1980.

Clause 28 – Procedure for certain orders and schemes

14. Clause 28 amends section 325 of the Highways Act 1980 by removing the requirement for orders under section 10 and schemes under section 16 or 106(3) to be made by statutory instrument. It also allows section 10 orders and section 16 and 106(3) schemes to be amended and revoked by a subsequent order or scheme. This amendment enables a consistent approach to handling various Highways Act orders in England. The clause currently inadvertently applies to Wales and discussions are ongoing with UK Government officials to ensure the provision applies to England only.

Clause 29 – Compulsory acquisition powers to include taking of temporary possession

15. Clause 29 amends section 250(8) of the Highways Act 1980. The proposed additional provision includes the right to take temporary possession or occupation of land when exercising compulsory acquisition powers in relation to road schemes. This introduces powers to temporarily possess and use land (compulsorily or by agreement) to allow scheme promoters a proportionate route to land assembly where permanent acquisition of land or rights or uncertainty over return of acquired land cause delay.

Chapter 3 – Transport Infrastructure - Amendments to the Transport and Works Act 1992

Clause 30 – Replacement of model clauses with guidance

16. Clause 30 of the Bill amends section 8 of the Transport and Works Act 1992 ("TWA 1992") which currently allows the Secretary of State to make an Order prescribing Model Clauses that can be incorporated into TWA 1992 Orders, however there is no requirement for applicants to use these Model Clauses. The provision allows the Welsh Ministers to publish guidance regarding the preparation of TWA 1992 Orders, the guidance may include Model Clauses, allowing them to be updated on a more regular basis via a more efficient process. When determining a TWA application, the Welsh Ministers must have regard to any departure from that guidance, and reasons given by the applicant for this departure.

Clause 31 – Removal of special procedure for projects of national significance

17. Clause 31 removes Section 9 of the TWA 1992), which applies to applications that relate wholly or in part to proposals which in the opinion of the Secretary of State are of national significance. Since the TWA 1992, the 2008 Act established a new consenting regime for NSIPs, with clearly defined thresholds for what is considered of national significance, including a power

to direct that a project not meeting those thresholds is of national significance, either by itself or when considered with other projects. The 2008 Act effectively rendered section 9 of the TWA 1992 redundant and the intention of this clause is to clarify the existing legislative framework.

Clause 32 – Duty to hold inquiry or hearing

18. Clause 32 amends section 11 of the TWA 1992, which sets out a process for an objector to inform the Secretary of State or the Welsh Ministers if they wish their objection to be referred to an inquiry or be dealt with in accordance with section 11(2). The provision amends section 11(3) of the TWA 1992 to require the Secretary of State or the Welsh Ministers to only hold a public inquiry when an objector raises an objection that is considered to be substantial and not trivial or frivolous.

Clause 33 – Costs of inquiries

19. Clause 33 makes amendments to section 11 of the TWA 1992 and sets out a new power to ensure that decisions on costs arising from a Public Inquiry ("PI") are to be made by the Inspector conducting the PI, unless the Secretary of State or Welsh Ministers direct that a costs decision is to be determined by them.

Clause 34 – Deadlines for decisions

20. Clause 34 amends section 13 of the TWA 1992 to add a power to enable regulations to set rules that provide a time period for undertaking actions and making decisions for cases involving applications under section 6 (applications for orders under sections 1 and 3) of the TWA 1992. If a rule is to apply in relation to Wales, it may only be made with the agreement of the Welsh Ministers.

Clause 35 – Publication of decisions and time for bringing challenge

21. Clause 35 amends section 14 of the TWA 1992 to change how a decision is published. Changing this from publication in the London Gazette to the Welsh Ministers' website. Section 22 of the TWA 1992 is also amended to provide that the challenge period (of 6 weeks) starts the day it is published in accordance with the new requirements.

Clause 36 – Fees for certain services

22. Clause 36 inserts a new section 23A into the TWA 1992 which provides the Welsh Ministers with regulation making power to stipulate public bodies (limited to certain statutory bodies and local planning authorities) who are allowed to charge for the services provided to schemes within the TWA 1992 application process.

Clause 37 – Disapplication of heritage regimes

23. Clause 37 inserts a new section 17 into the TWA 1992 disapplying the listed building consent, conservation area consent for demolition and scheduled monument authorisation under the Historic Environment (Wales) Act 2023 where a TWA 1992 consent is given.

Clause 38 – Deemed consent under marine licence

24. Clause 38 introduces a new section 19A to the TWA 1992. The provision enables an order made under section 1 or 3 of the TWA 1992 to include provision deeming a marine licence under Part 4 of the Marine and Coastal Access Act 2009 to have been granted by the Welsh Ministers or Secretary of State.

25. Paragraph 31 of the LCM states that "Discussions are ongoing with UK Government officials about how the TWA 1992 is intended to apply offshore and how that interacts with the Welsh Ministers' functions of granting marine licences".

Clause 41 – Power to make consequential amendments

26. Clause 41 enables the Secretary of State to make consequential amendments for clauses 30 to 40 by regulation. The regulations that amend an Act of Parliament or an Act or Measure of the Senedd are subject to the affirmative resolution procedure.

Chapter 3 – Transport Infrastructure – Harbours: Fees for applications for harbour orders

Clause 42 – Fees for application for harbour orders

27. 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.

Part 5 – Compulsory Purchase

Clause 83 – Electronic service etc

28. Clause 83 amends section 6 of the Acquisition of Land Act 1981, section 38 of the Land Compensation Act 1961, and includes a new section after section 84 of the Land Compensation

Act 1973. These amendments look to facilitate electronic communication for the serving of notices and documents on different parties to the Compulsory Purchase Order ("CPO") process to speed up the process and reduce the administrative burden.

Clause 84 – Required content of newspaper notices

29. Clause 84 amends sections 11, 15 and paragraphs 2 and 6 of Schedule 1 of the Acquisition of Land Act 1981. These simplify the level of detail required to be included within a newspaper notice for the advertising, making and confirmation of CPOs, by replacing the requirement for a complete description of the land with the postal address of the land or a description of the land's location.

Clause 85 – Confirmation by acquiring authority orders with modifications

30. Clause 85 allows an acquiring authority to confirm its own compulsory purchase order with modifications providing they do not affect a person's interest in land. It also allows this where they do, provided the affected person gives their consent for the modification being made.

Clause 86 – General vesting declarations: expedited procedure

31. Clause 86 amends the Compulsory Purchase (Vesting Declarations) Act 1981 and introduces processes for the earlier taking of possession of land/property by acquiring authorities under the general vesting declaration procedure.

Clause 87 – General vesting declaration: advancement of vesting by agreement

32. Clause 87 amends the Compulsory Purchase (Vesting Declarations) Act 1981 and introduces a process for the earlier taking of possession of land/property under the general vesting declaration procedure by agreement.

Clause 89 – Home loss payments: exclusions

33. Clause 89 amends the Land Compensation 1973 and introduces new section 32A into that Act which excludes the right to a home loss payment in certain situations.

Clause 90 – Temporary possession of land

34. Clause 90 amends section 18 of the Neighbourhood Planning Act 2017, which has not yet been brought into force. The Neighbourhood Planning Act 2017 introduced power for temporary possession for compulsory acquisition of land as it was recognised that temporary

possession of land for CPO may be needed for worksites, storage etc. and to require land on a temporary basis the acquiring authority must either obtain a permanent right or enter into a commercial agreement with the landowner. This can result in delay to the delivery of a project and increased costs.

Clause 91 – Amendments relating to section 14A of the Land Compensation Act 1961

35. Clause 91 amends the legislation which allows authorities to include in their compulsory purchase orders (CPOs) directions that the assessment of compensation relating to open market value of land compulsory purchased is to be assessed in accordance with section 14A of the Land Compensation Act 1961 ("a section 14A direction") so that value attributed to the prospect of the granting of planning permission ("hope value") can be disregarded.

Clause 92 – New powers to appoint an inspector

36. Clause 92 includes a new section after section 4 of the New Towns Act 1981 and includes a new paragraph after paragraph 1 of Schedule 2A of the Land Compensation Act 1961. Under the New Towns Act 1981 all CPOs must be submitted by the acquiring authority to the relevant Welsh Minister or Secretary of State for confirmation. They also have discretion under the Acquisition of Land Act 1981 to allow Inspectors to confirm CPOs.

Supplementary Legislative Consent Memorandum (Memorandum Number 2)

37. This memorandum refers to provisions as tabled by the UK Government to the Bill for consideration at House of Commons. Paragraph 3 of Memorandum No.2 states that the UK Government tabled 17 amendments on 23 April, and 22 amendments on 24 April for consideration at Commons Committee.

38. Paragraph 10 of Memorandum No.2 states the following amendments have been assessed by the Welsh Government as requiring the legislative consent of the Senedd:

- 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)"

39. 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.

Amendment Gov NC43 - Changes to, and revocation of development consent orders.

40. This amendment proposes to amend Schedule 6 of the Planning Act 2008 ("the 2008 Act"), which relates to changes to, and revocation of, orders granting development consent. The proposed amendment would omit paragraph 2 of Schedule 6 to the 2008 Act. The effect of this would be to repeal the procedure for making non-material changes to development consent orders (DCOs) granted under that Act. Amendment Gov NC43 also makes consequential changes to Schedule 6 to the 2008 Act, in order to reflect the omission of paragraph 2.

Gov NC44(a), (b) and (e) – Applications for development consent: removal of certain pre-application requirements

41. This clause omits a range of sections from the 2008 Act. The provision proposes to remove: (a) section 42 (duty to consult); (b) section 43 (local authorities for purposes of section 42(1)(b)); (c) section 44 (categories for purposes of section 42(1)(d)); (d) section 45 (timetable for consultation under section 42); (e) section 47 (duty to consult local community); (f) section 49 (duty to take account of responses to consultation and publicity).

42. These sections currently require a person who proposes to apply for development consent to consult particular people about the proposed application, including prescribed bodies, local authorities, the local community, and persons with an interest in the land in question. Local authorities in Wales are specified on the face of the Bill as bodies that must be consulted where the development is within their area. The Welsh Ministers and other Devolved Welsh Authorities are also specified in Regulations made under section 42 of the 2008 Act. Paragraph 15 of Memorandum No.2 states that "As such, the revocation of these sections will directly affect the functions of the Welsh Ministers and Devolved Welsh Authorities."

Gov NC45 – Applications for development consent: changes related to section (Applications for development consent: removal of certain preapplication requirements)

43. This clause makes changes related to the omission of pre-application consultation requirements in relation to Gov NC44. The amendment at subsection (5) substitutes section 46

(duty to notify the Secretary of State of proposed application) of the 2008 Act. The proposed new section replaces the requirement to notify the Secretary of State of a proposed application with a requirement to notify the Secretary of State and each host local authority. In Wales, a local authority will include a county council, or county borough council. As such, local authorities will be provided certain information as specified in the proposed new section 1(C) to be inserted into the 2008 Act and also in Regulations. In addition, the requirement for the applicant to provide the Secretary of State with the information before commencing consultation under section 42 of the 2008 Act is omitted. Paragraph 18 of Memorandum No.2 states that "the effect of these amendments place a new function on the local planning authority who will receive the information specified".

44. The amendment at subsection (6) of Gov NC45 amends section 48 (duty to publicise) of the 2008 Act. Subsection (1) of section 46 requires the applicant to publicise the proposed application. Subsection (2) provides that Regulations made for the purpose of subsection (1) must make provision for publicity to include a deadline for receipt by the applicant of responses to that publicity. The Welsh Government is of the view that the provisions proposed by new clause Gov NC45 would confer, remove, or modify the functions of Devolved Welsh Authorities. As such, the Welsh Government believes that the amendments will trigger the legislative consent motion process and require the consent of the Senedd.

Correspondence from stakeholders

45. The Committee received correspondence from Wales Environment Link (WEL), Wildlife Trusts Wales (WTW), and RSPB Cymru, in relation to the first Legislative Consent Memorandum. The organisations raised several concerns, which are set out below.

46. Wales Environment Link (WEL) expressed concern that the Bill, as currently drafted, "demonstrates a fundamental misalignment with Welsh policy and legislation which, if unaddressed, will undoubtedly link to the degradation of Welsh nature and wellbeing." In WEL's view, the Bill "lacks the safeguards necessary to meet the UK's legally binding climate and nature commitments" and risks "regression of the levels of protection currently offered to nature." RSPB Cymru made similar points and cautioned that "despite Part 3 being for England only, the environmental damage could spill over into Wales".

47. Part 3 of the Bill introduces Environmental Delivery Plans (EDPs) and a Nature Restoration Levy. WEL argued that these mechanisms would allow developers to discharge environmental responsibilities by contributing financially rather than ensuring on-site environmental mitigation. Although the Bill does not apply Part 3 to Wales, WEL was concerned about indirect policy

pressure, saying that there is a "considerable risk that the acceptance of such an offsetting scheme in England could create pressure on Welsh planners… to adopt similar measures".

48. WTW and RSPB Cymru raised concerns about the territorial application of Schedule 4 of the Bill, which amends the *Habitats Regulations 2017* and related environmental legislation in both England and Wales, to facilitate the operation of EDPs. They consider this as inconsistent with the stated intention that Part 3 applies *only* in England. WTW and RSPB Cymru encouraged the Committee to seek clarification on this matter.

49. WEL proposed an amendment to Clause 24 to strengthen safeguards over Welsh environmental assets in relation to renewable energy development on the *Welsh Government Woodland Estate*. The proposed amendment seeks to prevent Natural Resources Wales from facilitating development that could adversely affect designated sites or irreplaceable habitats.

50. The proposed amendment would prohibit Natural Resources Wales from entering arrangements that could "directly or indirectly have adverse effects on a site designated under the Environment Act Wales (2016) or the Wildlife and Countryside Act 1981," or affect "irreplaceable habitat such as an ancient woodland."

Our view

We note the comments from stakeholders that the proposals in the UK Bill are not aligned with Welsh environmental policy and legislation, such as the Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. There are concerns that the Bill as drafted lacks adequate safeguards and could undermine progress on nature recovery and climate targets. We seek reassurance from the Cabinet Secretary that sufficient legislative protections are in place to prevent the UK Bill from lowering environmental standards in Wales, including through secondary impacts.

We are particularly concerned about the UK Government's proposed amendments that will remove certain pre-application requirements for NSIPs, including those in Wales. There is currently a legislative requirement for a person who proposes to apply for development consent to consult particular people about the proposed application. Under the proposed amendments, this requirement, in relation to a relevant public authority, will be replaced by a requirement to have regard to guidance issued by the Secretary of State. We believe the pre-application consultation process to be an important opportunity, and sometimes the only meaningful opportunity, for local communities and other stakeholders to have their voices heard. We believe that a potential watering-down of the pre-application consultation requirements risks significant problems not being identified until later in the development

process. We are also concerned that the proposed approach could result in a situation where the process for NSIPs in Wales and Welsh SIPs will not be aligned.

At the time of reporting, we had not seen the UK Government's guidance. It is difficult to reach a judgement, therefore, on the detailed consequences of the proposal. We believe that the guidance should be published, and that the Senedd should reassure itself on this matter, before it decides whether to give consent.

We note stakeholders' concerns about the territorial application of Schedule 4. The Schedule amends the Habitats Regulations 2017, which apply in both England and Wales, yet the Bill states that Part 3 applies to England only. We would be grateful for clarification from the Welsh Government on this matter.

Stakeholders were particularly concerned about EDPs and the Nature Restoration Levy as mechanisms to allow developers in England to make financial contributions instead of implementing mitigation measures. We acknowledge that these mechanisms will not apply to Wales. However, we note stakeholders' concern that they may be used to apply informal pressure on Welsh planning authorities to develop a similar approach. We seek assurance from the Welsh Government that any such approach would not be permissible under current planning policy and legislation in Wales.

We note WEL's proposed amendment to Clause 24 to prevent NRW from facilitating developments that could adversely affect protected sites or habitats such as ancient woodland, particularly on the Welsh Government Woodland Estate. The Welsh Government should set out its position on this matter and, if it is not able to secure an amendment to the UK Bill to deliver the proposed changes, should explain how it can secure the outcome proposed by the amendment.

Finally, there are several issues listed in the legislative consent memorandums that have been described by the Cabinet Secretary as requiring further discussion with the UK Government. We believe these issues should be resolved before the Senedd is asked to decide whether to give its consent.