

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Planning and Infrastructure Bill

July 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. The Bill completed its passage through the House of Commons on 10 June 2025. First reading in the House of Lords took place on 12 June 2025, with Second reading taking place on 25 June 2025. At the time this report was agreed, Committee stage was scheduled to begin on 17 July 2025.

¹ The Planning and Infrastructure Bill, as introduced (Bill 196)

² Explanatory Notes to the Bill, as introduced

³ 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).⁴
- 7.** We published our report on the Memorandum (our first report) on 28 May 2025.⁵
- 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.
- 11.** The Cabinet Secretary responded to our first report on 9 July 2025.⁶

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

- 12.** On 15 May 2025, the Cabinet Secretary laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill.⁷
- 13.** We published our report on Memorandum No. 2 (our second report) on 18 June 2025.⁸
- 14.** Paragraphs 13 to 21 of our second report provide an update on the provisions of the Bill which, at the time, the Welsh Government considered to

⁴ Welsh Government, [Legislative Consent Memorandum on the Planning and Infrastructure Bill](#), 26 March 2025

⁵ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Planning and Infrastructure Bill](#), May 2025

⁶ [Letter from the Cabinet Secretary for Economy, Energy and Planning](#), 9 July 2025

⁷ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Planning and Infrastructure Bill](#), May 2025

⁸ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Planning and Infrastructure Bill](#), June 2025

require the Senedd's consent., and set-out the Welsh Government's position as regards the amended provisions.

15. Our second report contained two conclusions.

16. The Cabinet Secretary responded to our second report on 9 July 2025.⁹

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

17. On 17 June 2025, the Cabinet Secretary laid before the Senedd a further Supplementary Legislative Consent Memorandum (Memorandum No. 3) in respect of the Bill.¹⁰

18. 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 26 September 2025.¹¹

Provisions for which the Senedd's consent is required

19. Memorandum No. 3 relates to amendments tabled to the Bill¹² by the UK Government on 3 June 2025 during Report Stage in the House of Commons.

20. At paragraph 8 of Memorandum No. 3, the Cabinet Secretary states that engagement between the Welsh and UK governments has led to the amendments which are the subject of Memorandum No. 3.

21. At paragraphs 9 to 24 of Memorandum No. 3 the Cabinet Secretary sets out details of the amendments for which the Senedd's consent is required. The Cabinet Secretary states consent is required for:

- Gov 93 which amends clause 31 (previously clause 28) (Procedure for certain orders and schemes);
- Gov 94 which amends clause 41 (previously clause 38) (Deemed consent under marine licence);

⁹ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025

¹⁰ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Planning and Infrastructure Bill, June 2025

¹¹ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Planning and Infrastructure Bill, June 2025

¹² Bill 250 (as amended in Public Bill Committee)

- Gov 95 which amends clause 41, and is consequential on Gov 97;
- Gov 96 which amends clause 41, and is consequential on Gov 97;
- Gov 97 which amends clause 41 and is consequential on Gov 94;
- Gov 98 which amends clause 41 and is consequential on Gov 97.¹³

22. On Gov 93, in Memorandum No. 3 the Cabinet Secretary states that the original amendments to section 326 of the *Highways Act 1980* (as proposed in the Bill as introduced) allowed section 10 orders and section 16 and 106(3) schemes under the 1980 Act to be amended and revoked by a subsequent order or scheme.¹⁴ In the Memorandum, the Cabinet Secretary noted that separate provision dealing with these matters is already proposed in Wales under section 2 of the Legislation (Procedure, Publication and Repeals) (Wales) Bill.¹⁵ In Memorandum No. 3 the Cabinet Secretary states:

“Amendment Gov 93 revises the original amendment to ensure that the position in Wales is preserved and in particular that the amendments proposed in the separate Welsh Bill will not be affected by Amendment Gov 93.”¹⁶

23. The Cabinet Secretary goes on to state:

“The inclusion of the provisions for Wales is needed to help address an issue identified during the Bill process. In essence, by removing the requirement for section 10 orders and section 16/106(3) schemes to be made by Statutory Instrument, the Welsh Ministers lost the ability to amend and revoke them. By amending section 326, this issue has been rectified, and the Welsh Ministers retain the ability to do so.”¹⁷

24. On Gov 94, in Memorandum No. 3 the Cabinet Secretary offers a reminder of the Welsh Government's concerns with the wording of new subsection 19A(3) to the *Transport and Works Act 1992* (TWA 1992) being inserted by clause 41 of the Bill (previously clause 38). The Cabinet Secretary notes that the wording of subsection (3) created uncertainty as to the intended application offshore and

¹³ Memorandum No. 3, paragraph 9

¹⁴ Memorandum No. 3, paragraph 12

¹⁵ Memorandum, paragraphs 19 and 66

¹⁶ Memorandum No. 3, paragraph 12

¹⁷ Memorandum No. 3, paragraph 28

how that interacted with the Welsh Ministers' functions of granting marine licences.¹⁸ In Memorandum No. 3 the Cabinet Secretary states:

"Amendment Gov 94 omits the drafting in clause 41 from the beginning to the end of line 19 on page 55 of the Bill (as amended in Public Committee stage) and inserts new replacement text. Subsections (1) to (4) of new section 19A are replaced with new drafting and a new subsection (4A) is introduced.

*The effect of Amendment Gov 94 reworks clause 41 and the provision for deemed marine licences in TWA Orders so that the Welsh Ministers may only authorise activity for which they are responsible under the marine licensing legislation (see Part 4 of the Marine and Coastal Access Act 2009), and it does the same for the Secretary of State. The amendments to new section 19A provide clarification that it is the responsibility of the Welsh Ministers, as the appropriate licensing authority, to deem a marine licence in Welsh offshore waters."*¹⁹

25. In Memorandum No. 3 the Cabinet Secretary later adds:

*"In the LCM laid on 26 March I indicated that whilst I was supportive of the provision to deem a marine licence under clause 38 (now clause 41), I sought reassurance from UK Government there was no unintended consequence in the offshore region. This amendment provides clarity as to the geographic extent that the Secretary of State and Welsh Ministers may grant a deemed marine licence, and the amendment address my concerns. Therefore, I am supportive of the amendment."*²⁰

26. In paragraphs 21 to 24 of Memorandum No. 3, the Cabinet Secretary explains how Gov 95 to Gov 98 make consequential amendments to the Bill as a result of the substantive changes being made by Gov 93 and Gov 94. The Cabinet Secretary also confirms that she is supportive of these amendments.²¹

¹⁸ Memorandum No. 3, paragraph 17

¹⁹ Memorandum No. 3, paragraphs 18 and 19

²⁰ Memorandum No. 3, paragraph 29

²¹ Memorandum No. 3, paragraph 30

27. With regards to the UK Government's views on the need for consent, the Cabinet Secretary states in Memorandum No. 2 that the UK Government's Minister for Housing and Planning, Mathew Pennycook MP, wrote to her on 3 June 2025, stating that the UK Government's considers that the Senedd's consent is required for Gov 93 and Gov 94.²² While agreeing with this analysis, in Memorandum No. 3 the Cabinet Secretary states that she has written to the Minister of State for Housing and Planning outlining the Welsh Government's view that Gov 95 to 98 are also amendments that require legislative consent from the Senedd.²³

28. "The Cabinet Secretary concludes:

*"It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill. These technical amendments address the issues previously raised to ensure the powers work for Wales."*²⁴

2. Committee consideration

29. We considered Memorandum No. 3 at our meeting on 7 July 2025.²⁵

30. We considered and agreed our report at our meeting on 14 July 2025.²⁶

Our view

Legislative consent

31. 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. 3.

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

Conclusion 1. We agree with the Welsh Government's assessment, as set out in Memorandum No. 3, of amendments made to the Bill which require the consent of the Senedd in accordance with Standing Order 29.

²² Memorandum No. 3, paragraph 25

²³ Memorandum No. 3, paragraphs 26 and 27

²⁴ Memorandum No. 3, paragraph 32

²⁵ ~~Legislation, Justice and Constitution Committee~~, 7 July 2025

²⁶ ~~Legislation, Justice and Constitution Committee~~, 14 July 2025

Matters of concern raised in our first and second reports.

33. 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).

34. As we note above, the Cabinet Secretary responded to our first and second reports on 9 July 2025.

35. In responding to our recommendations relating to intergovernmental working (recommendations 1 and 2), we note that Cabinet Secretary's statements that:

- engagement between Welsh and UK government officials on the proposals for the Bill began last summer²⁷;
- formal discussions on the content of the Bill began in November 2024, when initial drafts of the Bill were shared²⁸;
- the Cabinet Secretary was made aware of the issues with clauses 24 and 38 (now clauses 28 and 42) in December 2024, and with clause 28 (now clause 32) in February of this year²⁹;
- the intergovernmental engagement enabled Welsh Government officials to influence drafting ahead of the Bill's introduction, including changes to ensure there would be no adverse effects on infrastructure consenting powers³⁰;
- it was not until the final Bill was introduced to the UK Parliament that formal analysis was undertaken in the Welsh Government and the issues raised in the Legislative Consent Memorandum were identified³¹;

²⁷ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 1

²⁸ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 1

²⁹ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 1

³⁰ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 2

³¹ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 2

- the Cabinet Secretary and her colleagues agreed that intergovernmental engagement between officials would continue, resulting in amendments to the Bill at Report stage (Gov 93 to Gov 98) which ensure clauses 32 (clause 28 on introduction) and clause 42 (clause 38 on introduction) now work for Wales³²;
- intergovernmental work is continuing on clause 28 (clause 24 on introduction) to ensure it is consistent with the existing processes in Wales³³.

Conclusion 2. Given the months of engagement between the two governments ahead of the Bill's introduction, it is disappointing that the Bill was introduced to the UK Parliament containing provisions of concern to the Welsh Government

36. Recommendation 3 in our first report sought clarity from the Cabinet Secretary on the delegated powers in the Bill.

37. We note from her response to our first report that the Cabinet Secretary agrees with the analysis set out in paragraphs 40 to 43 of our first report as regards the powers delegated to the Welsh Ministers in the Bill, subject to the addition to that list of a power in clause 106 (clause 92 on introduction) to appoint (and to revoke that appointment) an Inspector to confirm decisions on Compulsory Purchase Orders made under the *New Towns Act 1981* or acquiring authorities where there are no objections.³⁴

38. We also note the Cabinet Secretary's confirmation that the Bill delegates the following powers to the Secretary of State to act in devolved areas:

- A power in clause 4(4) of the Bill as introduced (now clause 7(2)) which enables the Secretary of State to issue guidance relating to local impact reports which must be considered by a local authority (where the development is in Wales).

³² Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 2

³³ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 2

³⁴ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 3

- A power in clause 4(5) of the Bill as introduced (now clause 7(3)) which provides the Secretary of State with a further power to issue guidance relating to representations from public authorities.
- A power in clause 5(7) which enables the Secretary of State to issue guidance to applicants setting out best practice for pre-application steps³⁵;
- A regulation-making power in clause 34 of the Bill as introduced (now clause 38) which enables the Secretary of State to set rules regarding deadlines for decisions. The Cabinet Secretary states that this is because the rule and regulation-making powers conferred by the TWA 1992 have not been transferred to the Welsh Ministers and, as such, it is appropriate for the power to be conferred on the Secretary of State on this occasion but with a consenting role for the Welsh Ministers.
- A regulation-making power in clause 41 of the Bill as introduced (now clause 45) which enables the Secretary of State to amend an Act of Parliament or an Act or measure of the Senedd (such regulations may only make amendments that are consequential to clauses 34 to 44 of the Bill).³⁶

Recommendation 1. The Cabinet Secretary should confirm whether the Welsh Government asked the UK Government to include provision in the Bill that would transfer to the Welsh Ministers the rule and regulation-making powers conferred by the *Transport and Works Act 1992* to enable the regulation-making power in clause 34 of the Bill as introduced (now clause 38) to be delegated to the Welsh Ministers to act in devolved areas.

39. Our final recommendation in our first report asked the Cabinet Secretary to 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. The Cabinet Secretary told us:

"The Bill amends various Acts of the UK Parliament. Those Acts are not ones that will be restated as part of the planning consolidation exercise, so the amendments made by the Bill will not affect the content of the Planning (Wales) Bill."

³⁵ ~~Government amendment NC45~~, tabled for House of Commons Committee stage

³⁶ Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025, response to recommendation 3

In a small number of cases the Planning (Consequential Provisions) (Wales) Bill and the Bill will both need to make consequential amendments to the same provisions of another Act. Where that is the case the Government is preparing the Planning (Consequential Provisions) (Wales) Bill to take account of the amendments to be made by the Bill. Any further amendments to the Bill will be kept under review and could be dealt with at the Detailed Committee Consideration stage for the Planning (Wales) Bill, if necessary. I do not anticipate there being an issue in timings of these Bills and my officials are continuing to engage with UK officials on the timescales for the Bill."

40. The Planning (Wales) Bill and the Planning (Consequential Provisions) Bill are due to be introduced to the Senedd in September. We will be the responsible committee for scrutinising the Bills and we are aware that the Detailed Committee Consideration Stage referenced by the Cabinet Secretary will need to take place in January 2026.

Recommendation 2. Given the Cabinet Secretary is not in control of the Bill's progress through the UK Parliament, both in terms of the timescales for the remaining stages and the final text of the Bill that the UK Parliament may pass, we believe the Cabinet Secretary should provide clarity on how the Welsh Government proposes to handle a situation whereby the final text of the Bill is not approved by the UK Parliament by the time the planning Consolidation Bills reach Detailed Committee Consideration in the Senedd.

41. In our second report we noted that the Cabinet Secretary was awaiting information from the UK Government about the practical effects on Welsh public bodies and the public itself before making a recommendation on consent in relation two amendments tabled by the UK Government during Committee Stage in the House of Commons; these were Gov NC44 and Gov NC45. We note that Memorandum No. 3 does not provide an update on these matters.