

Report on the Planning (Wales) Bill and the Planning (Consequential Provisions) (Wales) Bill

November 2025



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November 2025



About the Committee

The Committee was established on 26 May 2021. Its remit can be found at www.senedd.wales/SeneddLJC

Current Committee membership:



Committee Chair:
Mike Hedges MS
Welsh Labour



Alun Davies MS
Welsh Labour



Samuel Kurtz MS
Welsh Conservatives



Adam Price MS
Plaid Cymru

The following Member attended as a substitute during the scrutiny of the Bill.



Tom Giffard MS
Welsh Conservatives

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Recommendation 1. During the debate on the Initial Consideration of the Bills, the Counsel General should provide the latest information about the required consent and consultation that is necessary to bring the Planning (Wales) Bill within the legislative competence of the Senedd. Page 32

Recommendation 2. During the debate on the Initial Consideration of the Bills, the Counsel General should provide the latest information about any amendments that will be required to be made to the Planning (Wales) Bill or the Planning (Consequential Provisions) (Wales) Bill as a consequence of the UK Government's Planning and Infrastructure Bill, should the Bills proceed to Detailed Committee Consideration.....Page 46

Recommendation 3. The Counsel General should confirm that section 9 of the Planning (Wales) Bill does not include any changes to existing law, and clarify her reason for that view.Page 82

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Conclusion 4. We consider that the Bills consolidate the law clearly and consistently.Page 82

1. Introduction

On 15 September 2025, Julie James MS, the Counsel General and Minister for Delivery (the Counsel General) introduced to the Senedd the Planning (Wales) Bill¹ (the Planning Bill) and the Planning (Consequential Provisions) (Wales) Bill² (the Consequential Provisions Bill) (collectively, the Bills), and an accompanying Explanatory Memorandum³.

1. The Bills were introduced as Consolidation Bills.⁴
2. Alongside the Bills and the Explanatory Memorandum, the Counsel General also laid: Explanatory Notes for each Bill; tables showing the origins of provisions, and the destinations of existing provisions restated, in each Bill; explanations of changes made to existing provisions within each Bill (referred to as the Drafters' Notes); and correspondence from the Law Commission.⁵
3. The Senedd's Business Committee referred the Bills to the Legislation, Justice and Constitution Committee (the Committee), and set a deadline of 28 November 2025 for reporting on the Bills at Initial Consideration^{6,7}.

¹ Planning (Wales) Bill, as introduced

² Planning (Consequential Provisions) (Wales) Bill, as introduced

³ Explanatory Memorandum to the Bills at introduction

⁴ Standing Order 26C states that a Consolidation Bill is a Bill introduced by a member of the government for the purpose of consolidating existing primary legislation, secondary legislation, and common law. Standing Order 26C.2 sets out the limitations on a Consolidation Bill.

⁵ Links to these documents are available at Annex 1.

⁶ As set out in Standing Order 26C.15 to 26C.65, there is generally a four-stage process for the consideration of a Consolidation Bill, involving: Initial Consideration; Detailed Committee Consideration; Detailed Senedd Consideration; and Final Stage.

⁷ Business Committee, Timetable for consideration: Planning (Wales) Bill, September 2025; Business Committee, Timetable for consideration: Planning (Consequential Provisions) (Wales) Bill, September 2025

Background

4. In January 2011, the then National Assembly for Wales's Sustainability Committee recommended that the Welsh Government should bring forward legislation to consolidate planning law in Wales, noting:

*"... although responsibility for the land use planning system is mostly devolved to the Welsh Ministers, it is still based largely on primary Town and Country Planning legislation for England and Wales ... Because of this, over time as the distinctive needs of a planning system for Wales have developed, it has become increasingly complex for users, local politicians and planning officers themselves to understand the requirements of the Welsh planning system."*⁸

5. In July 2011, the then Welsh Assembly Government included a proposal for "a planning Bill that would consolidate existing legislation, making it more transparent and accessible", within its legislative programme for 2011 to 2016.⁹ It subsequently introduced a Bill, which became the *Planning (Wales) Act 2015*¹⁰ (the 2015 Act), and during its passage the Welsh Government noted that it – or, it hoped, a future Government – would consider a planning consolidation Bill at a later date.¹¹

6. The Welsh Government's development of the 2015 Act led to its collaboration with the Law Commission for England and Wales (the Law Commission) in respect of the consolidation of planning law¹², and in July 2014 the Law Commission initiated two projects proposed to it by the Welsh Government:

- The form and accessibility of the law applicable in Wales;
- Planning and development control in Wales.¹³

⁸ National Assembly for Wales, Sustainability Committee (Third Assembly), *Inquiry into Planning in Wales, January 2011*, paragraph 29 and recommendation 1

⁹ National Assembly for Wales, Plenary (Fourth Assembly), *Record of Proceedings 12 July 2011*, pages 101 to 102

¹⁰ *Planning (Wales) Act 2015* (anaw 4)

¹¹ National Assembly for Wales, *Environment and Sustainability Committee (Fourth Assembly), Transcript 27 November 2014*, paragraph 267

¹² The Welsh Government's *Interim Response to the Law Commission's Report on Planning Law in Wales*, dated 9 May 2019, noted that the Welsh Government's work on the 2015 Act and the supporting evidence provided by the Law Commission's Independent Advisory Group highlighted issues relating to the complexity of the legislative framework underpinning the planning system.

¹³ Law Commission, *Twelfth Programme of Law Reform*, July 2014

7. The Law Commission published a report on the first of these projects in October 2016, which included a recommendation that the Welsh Government should undertake a programme of codification of Welsh law.¹⁴ Its report also differentiated between the meanings of consolidation and codification:

“... Consolidation is the process by which existing statutory provisions, spread across different statutes, are replaced with a single Act or a series of related Acts. ...

... codification as we have envisaged it differs from traditional consolidation in that (a) it is accompanied by a greater measure of reform of the legislation than is traditional in consolidation and (b) once a code is on the statute book, further legislation within its subject area (whether amending or adding to the existing text) is effected by amendment of or addition to the code and not in separate freestanding legislation.”¹⁵

8. Between November 2017 and March 2018, the Law Commission held a public consultation in relation to its project on planning law, in order to inform the production of a new Bill to form the “principal element” of a planning code for Wales.¹⁶ Its consultation paper noted that the law in respect of the planning system was “exceedingly complex”¹⁷ and that the system needed a “complete, radical overhaul”¹⁸. In respect of planning law in Wales, it highlighted issues in relation to:

- identifying the applicable legislation;
- complexity resulting from how planning law has developed;
- the unclear structure of legislation;
- the unclear application of UK Parliament legislation in Wales; and

¹⁴ Law Commission, Form and Accessibility of the Law Applicable in Wales, October 2016, recommendation 1

¹⁵ Law Commission, Form and Accessibility of the Law Applicable in Wales, October 2016, paragraphs 2.7 to 2.19

¹⁶ Law Commission, Planning Law in Wales Consultation Paper, November 2017, paragraph 0.2

¹⁷ Law Commission, Planning Law in Wales Consultation Paper, November 2017, paragraph 1.4

¹⁸ Law Commission, Planning Law in Wales Consultation Paper, November 2017, paragraph 1.11

- the availability of that legislation in English only.¹⁹

9. In November 2018, the Law Commission published its report, *Planning Law in Wales*, which included 192 recommendations.²⁰ The Welsh Government issued an interim response in May 2019, which confirmed that work had begun on a planning consolidation Bill.²¹ In May 2020 the Welsh Government responded in detail to each of the recommendations made in the Law Commission's report.²²

10. In September 2021, the Welsh Government set out its programme to improve the accessibility of Welsh law²³, as required by the *Legislation (Wales) Act 2019*²⁴ (the 2019 Act). It confirmed its intention to introduce a planning consolidation Bill, as well as a consolidation Bill on the historic environment²⁵ (enacted as the *Historic Environment (Wales) Act 2023*²⁶ (the 2023 Act)).²⁷ It also announced a phased project of consolidating key town and country planning subordinate legislation in order to supplement the planning consolidation Bill.²⁸ A revised version of the programme, published in January 2024, set out the Welsh Government's intention to create a code of Welsh law relating to planning in Wales during the current Senedd term.²⁹

11. The *Legislation (Procedure, Publication and Repeals) (Wales) Act 2025* repealed and amended certain redundant planning provisions in existing legislation.³⁰ On its introduction as a Bill, the Welsh Government noted that this approach would "allow some of the decluttering of the statute book in relation to planning to go ahead earlier than would otherwise happen, and will avoid having provisions relating to those repeals being included in the Planning Bill."³¹

¹⁹ Law Commission, *Planning Law in Wales Consultation Paper*, November 2017, paragraphs 1.45 to 1.69

²⁰ Law Commission, *Planning Law in Wales Final Report*, November 2018

²¹ Welsh Government, *Interim Response to the Report on Planning Law in Wales*, 9 May 2019

²² Welsh Government, *Detailed Response to the Law Commission's Report on Planning Law in Wales*, November 2020

²³ Welsh Government, *The future of Welsh law: A programme for 2021 to 2026*, September 2021

²⁴ *Legislation (Wales) Act 2019* (anaw 4), section 2

²⁵ The Law Commission's work also informed the development of the Historic Environment (Wales) Bill. See: *Planning Law in Wales Consultation Paper*, November 2017, paragraphs 3.87 to 3.100; and LJC Committee, *Report on the Historic Environment (Wales) Bill*, December 2022, paragraphs 87 to 96.

²⁶ *Historic Environment (Wales) Act 2023* (asc 3)

²⁷ Welsh Government, *The future of Welsh law: A programme for 2021 to 2026*, September 2021

²⁸ Welsh Government, *The future of Welsh law: A programme for 2021 to 2026*, September 2021

²⁹ Welsh Government, *The future of Welsh law: revised accessibility programme 2021 to 2026*, January 2024

³⁰ *Legislation (Procedure, Publication and Repeals) (Wales) Act 2025* (asc 3), Schedule 1

³¹ *Legislation, Procedure, Publication and Repeals (Wales) Bill, as introduced. Explanatory Memorandum*, October 2024, paragraph 39

12. In December 2024, the Welsh Government noted that, rather than including consequential amendments in a Schedule to the main planning consolidation Bill, it was preparing a “consequential provisions Bill” to be introduced at the same time as the main Bill.³²

The Planning (Wales) Bill

13. The purpose of the Planning Bill is to consolidate legislation relating to planning in Wales.³³ It brings together legislation currently set out in a number of Acts, mainly:

- the *Town and Country Planning Act 1990*³⁴ (the 1990 Act);
- the *Planning and Compensation Act 1991*³⁵;
- the *Environment Act 1995*³⁶;
- the *Planning and Compulsory Purchase Act 2004*³⁷ (the 2004 Act);
- the *Planning Act 2008*³⁸; and
- the 2015 Act.³⁹

14. The Planning Bill also incorporates some provisions currently to be found in subordinate legislation made under the Acts being consolidated, and case law and practice that is important in understanding the operation of those Acts.⁴⁰

15. The Planning Bill comprises 410 sections and 20 Schedules, and has 15 Parts.⁴¹

³² Welsh Government, *The future of Welsh law: annual report 2023 to 2024*, December 2024, paragraph 4

³³ Explanatory Memorandum, paragraph 1

³⁴ *Town and Country Planning Act 1990* (c. 8)

³⁵ *Planning and Compensation Act 1991* (c. 34)

³⁶ *Environment Act 1995* (c. 25)

³⁷ *Planning and Compulsory Purchase Act 2004* (c. 5)

³⁸ *Planning Act 2008* (c. 29)

³⁹ Explanatory Memorandum, paragraph 21

⁴⁰ Explanatory Memorandum, paragraph 29

⁴¹ Section 2 of the Planning Bill sets out the contents of each of the Bill's Parts.

The Planning (Consequential Provisions) (Wales) Bill

16. The purpose of the Consequential Provisions Bill is to amend and repeal enactments, and make transitional and savings provisions, in connection with the Planning Bill.⁴² As stated in the Explanatory Memorandum:

“Such consequential and transitional provisions are frequently dealt with in one or more Schedules to a Bill. However, given the provisions either have a limited lifespan in practice or will be of very limited interest to most readers of planning law, placing them in a separate Bill will leave the substantive provisions (and those that are used most frequently) in the Planning Bill free of lengthy Schedules of consequential and transitional provisions.”⁴³

17. The Consequential Provisions Bill comprises six sections and five Schedules.

The Committee’s remit and approach to scrutiny

18. The remit of the Committee is to carry out the functions of the responsible committee set out in Standing Orders 21 and 26C. We may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs, within or relating to the competence of the Senedd or the Welsh Ministers, including the quality of legislation.

19. In respect of a Consolidation Bill, Standing Order 26C.16 requires the Committee at Initial Consideration to consider and report on whether the Bill should proceed as a Consolidation Bill. In accordance with Standing Order 26C.17 it may consider:

- (i) whether it is satisfied that the scope of the consolidation is appropriate;
- (ii) whether it is satisfied that the relevant enactments have been included within the consolidation;

⁴² Explanatory Memorandum, paragraph 3

⁴³ Explanatory Memorandum, paragraph 4

- (iii) whether the Bill correctly consolidates the enactments or changes their substantive legal effect only to the extent allowed by Standing Order 26C.2⁴⁴;
- (iv) whether the Bill consolidates the law clearly and consistently;
- (v) any other matter it considers relevant to Standing Order 26C.

20. On 14 July 2025, we considered our approach to Initial Consideration and agreed to scrutinise the Bills in line with Standing Order 26C.17.⁴⁵

21. As part of our scrutiny we took oral evidence from several witnesses; a schedule of oral evidence received is included at Annex 2.

22. To inform our consideration, we held a public consultation between 16 September 2025 and 8 October 2025. A list of the 11 responses received is included at Annex 3.

23. We wrote to the Counsel General on 23 September 2025 to seek further information on several matters⁴⁶; we received a response on 10 October 2025⁴⁷. Ahead of the Counsel General's appearance before the Committee on 3 November 2025, we drew the consultation responses to her attention.⁴⁸ Consequently, the Counsel General wrote to the Committee on 28 October 2025 to address some matters raised by those who responded to the Committee's consultation.⁴⁹ The correspondence we exchanged with the Counsel General is available in full at Annex 4.

24. Our attention in this report is primarily focused on the advice and evidence received which is relevant to our role in recommending to the Senedd whether the Bills should proceed as a Consolidation Bills.

25. We would like to thank all those who have contributed to our work, whether by oral evidence or in written responses, and helped inform our consideration of the Bills.

⁴⁴ The Llywydd's [Guidance to support the operation of Standing Order 26C](#) provides further detail on the nature of Consolidation Bills and the extent to which they may revise, update and change existing law in accordance with Standing Order 26C.2.

⁴⁵ Legislation, Justice and Constitution (LJC) Committee, [14 July 2025, Minutes](#), item 17

⁴⁶ [Letter to the Counsel General, 23 September 2025](#)

⁴⁷ [Letter from the Counsel General, 10 October 2025](#)

⁴⁸ [Letter to the Counsel General, 21 October 2025](#)

⁴⁹ [Letter from the Counsel General, 28 October 2025](#)

26. In particular, we would like to thank the Counsel General, the Office of the Legislative Counsel and the Planning Directorate of the Welsh Government for their engagement during the scrutiny process and for their thorough responses to our questions.

27. Finally, we would like to put on record that the introduction of the Bills represent the culmination of a significant amount of work on behalf of the Welsh Government, and also by the Law Commission. In this regard we also wish to acknowledge the contribution of Dr Charles Mynors – the principal author of the Law Commission’s Planning Law in Wales report, who has been seconded to the Welsh Government⁵⁰ – whose role was frequently referenced⁵¹ during our consideration.

⁵⁰ During her appearance before the Committee on ~~3 November 2025~~ (Record of Proceedings (RoP) [41]), the Counsel General explained the role of Dr Mynors.

⁵¹ See: LJC Committee, ~~29 September 2025~~, RoP [246], LJC Committee, ~~6 October 2025~~, RoP [97], and LJC Committee, ~~13 October 2025~~, RoP [11].

2. General observations

The Welsh Government is satisfied that the Bills would be within the legislative competence of the Senedd.⁵²

Legislative competence

28. For a Bill – if passed as an Act of Senedd Cymru – to be within the Senedd’s legislative competence, it must not contain provision which fails to meet any of the tests set out in section 108A of the *Government of Wales Act 2006*⁵³ (the 2006 Act).

29. On their introduction, the Llywydd, the Rt Hon Elin Jones MS, stated that most of the provisions of the Bills would be within the legislative competence of the Senedd, however:

“Section 370 of the Planning (Wales) Bill would not be within legislative competence. This is because consent is required from the UK Government to bring it within legislative competence and this necessary consent has not been received at this time.

Section 105 of the Planning (Wales) Bill would not be within legislative competence. This is because it removes a power of the Secretary of State and therefore requires the Secretary of State to be consulted in accordance with paragraph 11(2) of Schedule 7B to Government of Wales Act 2006; confirmation of such consultation having been undertaken has not been received at this time.”⁵⁴

30. In oral evidence, the Counsel General said that the Welsh Government was yet to receive a formal response from the Secretary of State for Wales to its request for consent in respect of these provisions, although it had been informed by relevant officials in the Wales Office that there were no policy concerns. She

⁵² Explanatory Memorandum, page 5

⁵³ *Government of Wales Act 2006* (c. 32)

⁵⁴ Senedd Cymru, *Presiding Officer’s Statement on Legislative Competence: Planning (Wales) Bill and Planning (Consequential Provisions) (Wales) Bill*, 15 September 2025

also stated that the Welsh Government was “very confident” that the required consents will be in place by Royal Assent.⁵⁵

31. The Counsel General told us in correspondence that there were “no areas of law that we would have liked to consolidate but could not, either because of concerns regarding legislative competence or for other reasons.”⁵⁶

32. One of the tests set out in section 108A of the 2006 Act is that a provision must not be incompatible with the Convention rights (the rights protected by the European Convention on Human Rights).

33. The Counsel General stated in oral evidence that the Welsh Government had “carried out a full human rights assessment before introduction” and confirmed that she was satisfied that the provisions of the Bills are “wholly compliant” with the Convention rights.⁵⁷

The anticipated benefits of the consolidation

34. On the introduction of the Bills, the Counsel General stated that the existing legislative framework in relation to planning:

“... is fragmented and difficult to navigate. It is based on legislation passed by the UK Parliament, much of it decades old. The increasing divergence between the law in Wales and England can make it difficult to identify the law here. This situation is exacerbated by amendments from planning reform legislation introduced by the UK Government in recent years, with only limited aspects applying to Wales. ...

It is important that all stakeholders working with the system can clearly access and understand the law directly affecting them. The increasing need for legal advice to operate, use and engage in the planning system is of real concern. How effectively the planning system functions, or communities engage with it, should not depend on whether legal advice can be obtained or afforded. The introduction of the Planning (Wales) Bill addresses these complexities and issues.”⁵⁸

⁵⁵ LJC Committee, 3 November 2025, RoP [42]

⁵⁶ Letter from the Counsel General, 10 October 2025, paragraph 6

⁵⁷ LJC Committee, 3 November 2025, RoP [44]

⁵⁸ Plenary, 16 September 2025, RoP [213] to [214]

35. In addition, the Counsel General stated:

“This [Planning] Bill clearly marks a pivotal moment in the devolution story of our planning system. Should the Senedd pass the Bill, our reliance on various old Westminster Acts for our planning law will come to an end. It will also mean that any future changes to Welsh planning legislation will be much easier, with changes being made to a single consolidated text.”⁵⁹

36. The Explanatory Memorandum sets out the anticipated wider benefits of the legislation:

“Accessible law is essential to the achievement of an efficient, effective and simple planning system that reflects the specific needs of Wales. Simplifying and modernising planning legislation into a consolidated and bilingual Act will produce real practical benefits to all stakeholders in the planning system – from those who operate and use it to those who wish to access the law to engage in the system, that in turn will continue to contribute to the well-being of Wales and its people. Importantly, as planning law becomes more accessible and clearer, it will enhance public participation and confidence in the system.”⁶⁰

37. The Royal Town Planning Institute (RTPI) Cymru told us that the Planning Bill “would put us in a really strong position, and unique to the rest of the UK, in having what’s quite a myriad of disparate bits of legislation over time put into one place”⁶¹, and would be a “huge simplification for practitioners”⁶². They also referred to additional benefits:

“It will open up understanding of planning legislation to the wider public ... which will be beneficial in terms of transparency and trust in the planning system. But in terms of people wishing to undertake development, often they’ll employ an agent or they’ll certainly engage with a local planning authority—or planning authority now, I should say. And it will just simplify that process. It will reduce the amount of time their advisers

⁵⁹ Plenary, 16 September 2025, RoP [222]

⁶⁰ Explanatory Memorandum, paragraph 19

⁶¹ LJC Committee, 6 October 2025, RoP [91]

⁶² LJC Committee, 6 October 2025, RoP [93]

need to spend working through the legislation and potentially reduce the amount of legal advisers they need to engage in the process.”⁶³

38. Annabel Graham Paul, representing the Planning and Environment Bar Association, elaborated on the difficulties posed by planning law in Wales currently, and the benefits of the proposed legislation:

“... even for lawyers and experienced practitioners, we’re often left in a situation where we have to sort of double, triple-check things to see where we’re supposed to be looking. And so, turning to, as I say, members of the public or others, one can completely understand why it’s difficult. The Town and Country Planning Act 1990 was enacted pre devolution, we’ve got some bits post devolution. So, we really do now need a comprehensive Act for Wales, bilingual, that is just for Wales, so everybody knows all the law for Wales is just in one place.”⁶⁴

39. She also stated:

“... hopefully, going forward, for people who are starting out now, rather than transitioning from the older system, it should be clearer and easier for them. One of the things we [the Planning and Environment Bar Association] seek to do is to encourage the new generation of people to come forward who want to practice in planning and environmental law, particularly from diverse backgrounds and people who haven’t necessarily thought of that area of law as one they would be interested in. So, the more it’s in the spotlight and the more it looks like it’s exciting and new, I think that can only be a sort of good thing for the profession.”⁶⁵

40. Planning Officers Society Wales said:

“... the Bills provide a clearer and more accessible framework for planning the law in Wales, and that they align with modern legislative drafting standards. The principle of consolidation and codification is greatly welcomed. We think that it will help practitioners to identify relevant sections of legislation much

⁶³ LJC Committee, 6 October 2025, RoP [102]

⁶⁴ LJC Committee, 6 October 2025, RoP [159]

⁶⁵ LJC Committee, 6 October 2025, RoP [174]

more easily. It's also very helpful in identifying which elements of legislation are Wales specific. Many of us are dealing with agents who work in both England and Wales, and having to advise on which bits of legislation in a complex system are Wales-only at the moment.

We very much welcome the fact that it's a bilingual Bill for a bilingual country ...".⁶⁶

41. In expressing their support for the Bills, the UK Environmental Law Association (UKELA) stated:

"UKELA considers that the Bills are likely to improve many cross-sectoral aspects of environmental law such as improving access to information, public participation and access to justice. Moreover, the Bills improve how environmental duties are integrated within planning decisions by clarifying, codifying and updating references."⁶⁷

42. In response to our consultation, the following individuals and organisations also indicated their broad support for the Bills: Rhondda Cynon Taf County Borough Council, Historic Houses Wales, Charles Felgate from Geldards LLP, Planning Aid Wales, the Country Land and Business Association (CLA) Cymru, the Planning and Environment Bar Association, and Sara Hanrahan from Blake Morgan LLP.⁶⁸

The approach to consolidating

43. In her letter of 10 October 2025, the Counsel General explained the Welsh Government's approach to consolidating legislation pre-dating devolution:

"Most of the legislation consolidated in the Planning (Wales) Bill ('the Planning Bill') predates devolution, and the fact that its text does not fully reflect devolution is one of the reasons why consolidation is desirable. As explained in the introduction to the Drafters' Notes for the Planning Bill ... the Bill has been drafted to reflect how existing planning legislation has been affected by the Government of Wales Acts and transfer of

⁶⁶ LJC Committee, 13 October 2025, RoP [6] and [7]

⁶⁷ [PCB09 UKELA](#), paragraph 18

⁶⁸ See Annex 3 for links to the responses received to the Committee's consultation.

*functions orders made under them (as well as by various other changes in the law)."*⁶⁹

44. The Counsel General also stated, in response to our question on the matter:

*"... we do not think that the challenges of 'disentangling' Wales from England that have arisen in this project are unique to planning law. Where the provisions being consolidated apply to England as well as Wales, we have had to consider carefully the extent to which they are relevant to Wales and how they apply in relation to Wales, and we have had to ensure that the new provisions for Wales and the consequential amendments to existing legislation adopt a consistent approach that does not create unwanted gaps or overlaps. These issues also arose in the consolidation of historic environment legislation, and we expect them to arise in future consolidation exercises."*⁷⁰

45. We asked the Counsel General, in oral evidence, to set out how the Welsh Government had approached the consolidation exercise. Because of the "very technical" nature of the Bill, she asked her accompanying officials to explain the approach taken.⁷¹ Dr James George, Senior Legislative Counsel in the Office of the Legislative Counsel, and leader of the drafting team on the Bill, told us:

"Obviously, in this particular case, the Law Commission's report has been an important part of the background to what we've been doing, but it's only part of it, so it has informed what we've done, but it's not been all that we've done."

On all consolidation projects, we as legislative counsel start by considering the potential scope of a new consolidated Act, and trying to assess what can be brought together in it, and we discuss that with policy officials in the relevant area, and the lawyers who deal with that area, who use their experience to advise on what makes sense as a coherent piece of law. So, based on those discussions, we form a view on what is in, and then we, as the drafters, go through all the legislation that we've decided is in, looking at it from the drafting point of view of how we can bring it more in line with modern drafting

⁶⁹ Letter from the Counsel General, 10 October 2025, paragraph 1

⁷⁰ Letter from the Counsel General, 10 October 2025, paragraph 2

⁷¹ LJC Committee, 3 November 2025, RoP [55]

practice, improve the structure, and consider whether there are things that we don't need any more or odd things that might need to be fixed, and so on. We look at whether there are any improvements that are needed, and are those going to be within the scope of consolidation.

Sometimes that has involved further consultation with the Law Commission, as you heard from Professor Young. Policy officials obviously look at everything we do. The lawyers in the planning law team in the Welsh Government's legal services department look at everything, to make sure they're happy that we're not changing anything by accident. And we also, as the drafters, work very closely with the Welsh language terminologists and legislative translators to make sure that everything expresses the effect of the existing law as well as we can, in both languages. Obviously that's an iterative process that can affect both texts as those discussions go on.”⁷²

46. Dion Thomas, Head of Legislation and Performance at the Welsh Government's Planning Directorate, and policy lead for the Bill, explained the process from a policy perspective:

“... we get the questions through from the drafters around the legislation, and we will consider the questions that arise ... A lot of the evidence, obviously, has come from the Law Commission report. That's a good basis, but then if there are areas during the drafting process that we, perhaps, aren't sure about, then we've taken the opportunity to check with relevant stakeholders on those.

So, for example, internally, we will have discussed with various departments. ... So, you've got PEDW, which is Planning and Environment Decisions Wales. They deal with the planning appeals for the Welsh Ministers. So, the appeal provisions we've been able to check with them. We've discussed with highway colleagues in relation to the highway provisions, where they undertake functions on behalf of the Welsh Ministers in that respect.

⁷² LJC Committee, 3 November 2025, RoP [57] to [59]

*And then, externally, we have also undertaken that exercise. In particular on the minerals and waste side of things, we've gone to local authority practitioners, to identify what we think and to see whether they agree with that approach."*⁷³

47. Claire Fife, Head of the Welsh Government's Legislative Codes Office, and programme manager for the Welsh Government's programme to improve the accessibility of Welsh law, explained the approach taken to preparing the documents accompanying the Bills:

*"... it's a small group then that starts pulling together the explanatory notes or the tables of origins, destinations, and eventually it all comes together. But it's quite something to watch, really. I'm not a part of planning, but seeing this expertise come together and this checking constantly that we're holding tight to the Standing Orders, it's quite something. And then, ultimately, we're ready then to take it to the Counsel General and make sure the Counsel General is content."*⁷⁴

48. The Counsel General added her observations:

*"And I suppose the colloquial thing is, you've got to check that you're not enshrining custom and practice that's grown up, but actually isn't based on the base law. ... So, what this team is doing is checking that just because something is a custom and practice, it is actually in the law, based in the law, and that we're restating the law as it is. And the custom and practice might be something you want to do later, or actually it might not be something you want to do later. So, it's quite an iterative process of, 'Well, we do it like this, why do we do it like this?' You go back to the base material and so on. So, it's a very exhaustive and clever and intense process. I would not in any way pretend to have the level of knowledge that the people who have been involved in this legislation have, and will be invaluable to us going forward in terms of any reforms we want to do as well."*⁷⁵

⁷³ LJC Committee, 3 November 2025, RoP [62] to [64]

⁷⁴ LJC Committee, 3 November 2025, RoP [65]

⁷⁵ LJC Committee, 3 November 2025, RoP [66]

49. Albeit in the context of consolidating subordinate legislation, Annabel Graham Paul raised a “word of warning” about the risks of oversimplifying legislation, and provided an example:

“... when the coalition Government created the national planning policy framework, which was a piece of policy that was intended to simplify all of the different planning practice guidances and planning policy statements that have been around for quite a long time and had got quite voluminous, but were quite well understood, they created this one policy document and said, ‘Right, we have a one-stop shop, and it’s all very simple’. And it did make changes as well; it wasn’t just consolidation. But that NPPF has triggered a lot of litigation in the higher courts in terms of its interpretation. So, the danger can be that oversimplification creates scope for interpretation. So, I think that would be the only warning when you’re dealing with something like secondary legislation, where there’s a lot going on there, that if we seek to make it too simple, you can almost open yourself up for different people to take different views and, potentially, courts to have to intervene in terms of interpretation. But if it can be consolidated so that it’s not too stripped bare and is actually consolidated and made more accessible, then I’m sure that would be a positive thing in the same way as the Act.”⁷⁶

50. She further stated:

“... But there is, I suppose, a risk and scope that a court could say, ‘Well, why did they change that? They must have meant something different.’ So, that’s the risk. But I think that, if you make it clear that it’s to modernise and it’s not intended to mean anything different, then you remove that or at least minimise that risk.”⁷⁷

51. Planning Officers Society Wales recognised and reiterated the points raised by Annabel Graham Paul in relation to the risk of oversimplification while consolidating the subordinate legislation to be made under the Bills.⁷⁸

⁷⁶ LJC Committee, 6 October 2025, RoP [201]

⁷⁷ LJC Committee, 6 October 2025, RoP [203]

⁷⁸ LJC Committee, 13 October 2025, RoP [50]

52. In responding to these points, the Counsel General remarked that “something that might on the face of it seem simple actually really isn’t, and then other things that might seem very complex are capable of a simple answer”, and invited Dr James George to explain the Welsh Government’s approach in this regard.⁷⁹ He stated:

“Certainly, the issue you mentioned is definitely one that we have considered, that we’ve been quite anxious about all the way through the process. I think I would describe the approach we’ve taken as being positive, but careful. So, we’ve looked very carefully at the existing legislation to try and understand how things work. We’ve tried to identify cases where we could improve how it’s presented, or if we’ve seen things that don’t seem to be needed, we’ve considered whether we could just leave them out. But it has also been very much at the front of our minds that this is a consolidation exercise and we’re not trying to change the effect of the law. So, whenever we have changed any wording, we’ve thought very hard about whether that could make any difference to the legal effect. Obviously, because it’s a consolidation Bill, we don’t want to stray beyond what’s allowed by the Standing Order, we don’t want to make some inadvertent policy reforms or cause any problems, we don’t want to reopen issues that have previously been settled and create risks that people might start arguing about them again.

*So, I think I would say that the risk of new litigation is one of the reasons why we’ve been careful, but it’s part of a bigger set of reasons that all point in that direction. And I would say the ‘we’ I’m talking about is all of us—the policy officials and the lawyers—”.*⁸⁰

Financial implications

53. Standing Order 26C.9(vii) requires an Explanatory Memorandum accompanying a Consolidation Bill to confirm that the provisions of the Bill give rise to no additional significant expenditure payable out of the Welsh

⁷⁹ LJC Committee, 3 November 2025, RoP [68]

⁸⁰ LJC Committee, 3 November 2025, RoP [69] and [70]

Consolidated Fund, and where it gives rise to additional expenditure, set out the best estimates for this.

54. In this regard, the Explanatory Memorandum states that the provisions of the Bills do not give rise to additional significant expenditure payable out of the Welsh Consolidated Fund, or charge expenditure on the Fund.⁸¹

55. It notes, however, that there are “small transitional costs” associated with the implementation of the Planning Bill⁸², should it be enacted, arising primarily from the opportunity costs of time spent producing guidance, updating websites, and attending webinars and meetings.⁸³ These transitional costs are anticipated to be:

“... approximately £74,100 for Welsh Government, £45,300 for planning authorities, and £127,800 for private industries totalling around £247,200 which will be spread across the implementation period (2026-2027).”⁸⁴

56. On 29 September 2025, the Finance Committee sought further information from the Counsel General to assist its scrutiny of the financial implications of the Bills.⁸⁵ The Counsel General responded on 10 October 2025⁸⁶, and the Finance Committee noted the response at its meeting on 16 October 2025⁸⁷.

57. In her letter of 10 October 2025, the Counsel General:

- set out the methodology used by the Welsh Government for the purposes of estimating the transitional costs associated with the implementation of the Planning Bill;
- explained that the cost estimates were informed by “targeted engagement and sector-specific insights”;
- stated that she was confident that the cost estimates identified for the Welsh Government were “robust and reflective of expected resource use”; and
- noted that the anticipated benefits and savings relating to consolidation and codification more generally were considered as part of the

⁸¹ Explanatory Memorandum, paragraphs 58 and 59

⁸² Explanatory Memorandum, paragraph 60

⁸³ Explanatory Memorandum, paragraph 63

⁸⁴ Explanatory Memorandum, paragraphs 60 to 81

⁸⁵ [Letter from the Chair of the Finance Committee to the Counsel General, 29 September 2025](#)

⁸⁶ [Letter from the Counsel General to the Chair of the Finance Committee, 10 October 2025](#)

⁸⁷ [Finance Committee, 16 October 2025](#)

Explanatory Memorandum to the Legislation (Wales) Bill⁸⁸ (which later became the 2019 Act).⁸⁹

58. RTPI Cymru told us that the Welsh Government’s estimate in the Explanatory Memorandum of the amount of time required for planning authorities to familiarise themselves with the legislation appeared to be a “slight underestimate”. They stated:

“... a lot of the work will come in some of the template documents—so, things like statutory consultation letters, site notices, press notices, decision notices, where the legislation sets out what they say. So, there’ll be lots of references in those to the current legislation that have to be updated. ... However, because they are largely on a statutory template, if guidance was provided once centrally, for example, by the Welsh Government ... about exactly which sections need to be tweaked and where they’re mapped to ... That will cut down the time.”⁹⁰

59. Planning Officers Society Wales noted that the estimate in relation to planning authorities was “about appropriate”, but “probably likely an underestimate”. They elaborated:

“... it wouldn’t necessarily be a planning officer making changes. We would have IT requirements, supporters amending the websites, if there was an issue on there. We also may need to contact our database providers to change templates. These things can take time. ... We think there probably have been a few documents that haven’t necessarily been considered, for example, tree preservation order letters, enforcement, appeal notices, templates for delegated officers, supplementary planning guidance, the LDP itself, potentially, and annual monitoring reports.”⁹¹

⁸⁸ Legislation (Wales) Bill, Explanatory Memorandum, revised after Stage 2, June 2019, Part 4 – Regulatory Impact Assessment

⁸⁹ Letter from the Counsel General to the Chair of the Finance Committee, 10 October 2025

⁹⁰ LJC Committee, 6 October 2025, RoP [140]

⁹¹ LJC Committee, 13 October 2025, RoP [40]

60. RTPI Cymru also noted that while a three-hour webinar for planning authorities – as suggested in the Explanatory Memorandum – would be “most welcome”, more extensive provision would be necessary.⁹²

61. Annabel Graham Paul reflected on the estimates provided in the Explanatory Memorandum for the time needed for private law firms to familiarise themselves with the Bills⁹³, once enacted:

“... I think it’s a bit of a tricky one to estimate, because it obviously depends to what extent you want to familiarise yourself with the Bill. If you are a high-street firm that has an occasional planning case that passes your desk, but it’s not the mainstay of your practice and you need to know, broadly, what the Bill is about but would then go and seek more detailed advice on any particular matter, then I would say three hours probably sounds about right. I think, for somebody like myself and our members, whose entire practice is in planning and environmental law, we would probably, hopefully, spend a little bit longer than that. But, ultimately, frankly, I think that’s our problem rather than a problem for the Senedd, because you’re there to create the legislation and we’re there to respond to that. So, whilst I completely see that training costs for the Government and for planning authorities are very important, I think in terms of private firms, really, that’s down to us to ensure that our continuing professional development is up to date.”⁹⁴

62. Charles Felgate from Geldards LLP however raised concerns about the accuracy of these estimates:

“I do agree with the published impact statements that there will be a direct cost associated with this Bill as lawyers will need to familiarise themselves with it in order correctly inform their work for their clients. This is anticipated to be undertaken as part of existing internal briefing and updates which would take a junior officer around 3 hours to prepare the briefing with support from the guidance to be published by the Welsh Government. However, it is not accurate to suggest that there are no ongoing costs beyond that and it is an oversimplification

⁹² LJC Committee, 6 October 2025, RoP [151]

⁹³ Explanatory Memorandum, paragraph 75

⁹⁴ LJC Committee, 6 October 2025, RoP [192]

of a system that takes many years of experience to grapple with. By way of example I am very familiar with the TCPA and its taken almost 25 years of practice to know where to find things but I still have to look them up and finding things is not always quick. I will be almost constantly trying to find the equivalent of the old section in the Bill assuming it is enacted – and there are time costs associated with that. Generally speaking these will be handed on to clients, but that is not always the case. I do not suggest this is a reason not to proceed – but it is a reality that ought to be factored into any decision to proceed with the Bill.”⁹⁵

63. In response to the concerns raised by Charles Felgate, the Counsel General said:

“... when I was still a practising lawyer somebody changed all the civil procedure rules and all the terminology, and most of us spent a lot of time standing in courts, going, ‘Disclosure, discovery, whatever it’s called, you know, that thing where we exchange papers—what’s it called now?’ So, you just have to get used to it. When I started practising law most of it was in Latin. I don’t remember anybody saying that as a result of it going into English we all had to take a year off to learn the new terminology. So, I’m not trying to minimise it: of course you have to do that, and of course it is extra work for people to cross-check that they’ve got the right reference to the right sub-clause or whatever it is. Of course they have to do that, but you would expect them to be able to pretty rapidly do that, given that the law itself hasn’t changed.”⁹⁶

64. She also added:

“... some of them [private law firms] will see it as an opportunity, as part of continuing professional development. There are many private practice law firms—I worked for one myself—that make a fair amount of their income from teaching other lawyers how to adapt to changes in the law. ... Some of these law firms will rapidly get themselves up to speed and then give seminars for other law firms and, indeed, for local authority

⁹⁵ PCB03 Charles Felgate, Geldards LLP, page 4

⁹⁶ LJC Committee, 3 November 2025, RoP [223]

practitioners and others on what the cross-references are, they'll produce charts of it ...".⁹⁷

Impact assessments

65. Standing Order 26C.9(viii) requires an Explanatory Memorandum accompanying a Consolidation Bill to set out the potential impact (if any) of the provisions of the Bill on the justice system in England and Wales, in accordance with section 110A of the 2006 Act.

66. Accordingly, the Explanatory Memorandum states:

"The potential impacts on the justice system of the Bills have been assessed and it is considered that there is no or negligible impact on the justice system. This is due to the existing provisions relating to the planning system being restated with minimal changes to their effect and no new offences being created. Where small changes have been made, such as the removal of the option of imprisonment for some offences and changes to achieve consistency of approach across the Planning Bill or to align with current practice, we consider they result in no or negligible impact on the system. Due to the nature of the Consequential Provisions Bill, it is considered that there would be no or negligible impact on the justice system. The Ministry of Justice agrees with the assessment that there is a nil/minimal impact to the justice system of these Bills.

The consolidation does mean that on the rare occasions those in the justice system may need to engage with the legislation, they will need to look at different legislation, meaning they will need to familiarise themselves with it. Once this has been done the effect will be positive because (from a Welsh perspective) there will be a single, modern, bilingual Act applicable in Wales; and because (from an English perspective) the law applicable in England will be less complex as provisions within the existing legislation that apply to Wales only will be removed."⁹⁸

67. The Explanatory Memorandum also states that "consideration has been given to whether an integrated impact assessment of the consolidation of planning law

⁹⁷ LJC Committee, 3 November 2025, RoP [229]

⁹⁸ Explanatory Memorandum, paragraphs 86 and 87

is desirable”, in light of learning from impact assessments conducted by the Welsh Government in respect of the 2019 Act, its programme to improve the accessibility of Welsh law, and the 2023 Act. However, it states:

“Given the duplication of work and the fact that no new policy is being delivered through the consolidation it has been decided that an integrated impact assessment would not be undertaken.

It is intended that the same approach will be taken for the future consolidation of planning related subordinate legislation if the Planning Bill is passed; however, if the subordinate legislation supporting the commencement of the Bill contains new policy or proposals then an integrated impact assessment of those elements will be undertaken.”⁹⁹

68. In oral evidence, the Counsel General similarly stated that, because the introduction of the Bills “is about improving accessibility of the law and clarifying it”, with no new policies involved, the Welsh Government did not feel it necessary to undertake an integrated impact assessment.¹⁰⁰

Our view

69. We note the evidence in relation to matters of legislative competence from the Counsel General. We also note the Llywydd’s statement that, in her view, most of the provisions of the Bills, except for sections 105 and 370 of the Planning Bill, would be within the legislative competence of the Senedd.

70. In order for these sections to be within legislative competence, we note that the Counsel General is confident that the required consent of the UK Government in respect of section 370 will be secured in time for Royal Assent, and that the required consultation in respect of section 105 will have also been undertaken by this time. We believe that the Counsel General should provide the latest information in respect of this consent process and consultation during the Initial Consideration debate.

Recommendation 1. During the debate on the Initial Consideration of the Bills, the Counsel General should provide the latest information about the required

⁹⁹ Explanatory Memorandum, paragraphs 83 to 85

¹⁰⁰ LJC Committee, 3 November 2025, RoP [46]

consent and consultation that is necessary to bring the Planning (Wales) Bill within the legislative competence of the Senedd.

71. We also note the Counsel General's confirmation that an assessment of the Bills' engagement with human rights has been conducted, and that she is satisfied that the provisions of the Bills are compliant with human rights.

72. While we acknowledge that the Bills have been introduced as Consolidation Bills, and are therefore not anticipated to make any significant changes to existing law, we would have preferred for an assessment of the Bills' engagement with human rights to have been included in the Explanatory Memorandum, in accordance with best practice. We express this view in line with statements we have made previously in respect of other Bills introduced by the Welsh Government.¹⁰¹

73. It is clear from the evidence we have heard that the inaccessibility of the existing legislative framework in relation to planning in Wales poses many difficulties for those who need to engage with this area of law. We recognise the impact that the complexity of the existing law has on practitioners and – perhaps more importantly – on members of the public who wish to participate in the planning process.

74. We therefore acknowledge the benefits that the Bills are anticipated to bring – should they be passed by the Senedd – by making primary legislation on planning in Wales significantly more accessible, and by also making much of it available in both Welsh and English for the first time. We also note that, while these benefits are likely to be felt by those working in the planning system, there is also scope for benefits to be realised on a wider scale, by improving understanding, openness and trust in this system.

75. We welcome the Welsh Government's approach to consolidating the existing legislation. We acknowledge the methodical and diligent approach it has taken to seek to improve the accessibility of the law while observing the allowances provided by the Standing Orders in respect of Consolidation Bills.

76. We would also like to acknowledge that, by laying the foundation to this consolidation, the Law Commission has made a significant contribution. We recognise that the recommendations it made in its Planning Law in Wales report took account of the views of a range of stakeholders, and we further acknowledge

¹⁰¹ See, for example, paragraph 19 and conclusion 1 of our October 2025 [report on the Environment \(Principles, Governance and Biodiversity Targets\) \(Wales\) Bill](#).

its more recent contribution in making further recommendations to be incorporated into the Planning Bill.

77. In respect of the financial implications of the Bills, we note the Counsel General's confirmation that the Bills do not give rise to additional significant expenditure payable out of the Welsh Consolidated Fund, or charge expenditure on the Fund. We also note the views of those who gave evidence to us in relation to the cost estimates provided by the Welsh Government.

78. In addition, we note the Counsel General's statement that the Bills will have no impact, or a negligible impact, on the justice system. We also note the Counsel General's justification for not conducting an integrated impact assessment in respect of the Bills.

3. Is the scope of the consolidation appropriate?

In accordance with Standing Order 26C.17 our consideration of the Bills has included assessing whether we are satisfied that the scope of the consolidation is appropriate.

Setting the scope

79. The Explanatory Memorandum provides a commentary on the Welsh Government's approach to setting the scope of the consolidation exercise:

*"General planning law relates to many (if not all) areas of activity, but that does not mean that legislation governing those areas should come within the scope of the consolidation of planning law. In preparing the consolidation, the general focus has been on the current existing planning law where the planning regimes established by that legislation is confined to development on land. So, for example, legislation about activities in the sea, such as the Marine and Coastal Access Act 2009 is not included in the current consolidation."*¹⁰²

80. It also states that consideration has been given to the views of the Law Commission in its report, Planning Law in Wales¹⁰³, which concluded that the Planning Bill should include as far as possible all of the primary legislation relating to:

- the planning and management of development (including works affecting listed buildings and conservation areas);
- the provision of infrastructure and other improvements;
- outdoor advertising and works to protected trees;
- public-sector led improvement and regeneration (insofar as currently provided within the 1990 Act); and

¹⁰² Explanatory Memorandum, paragraph 41

¹⁰³ Explanatory Memorandum, paragraph 41

- supplementary and miscellaneous provisions.¹⁰⁴

81. The Law Commission also considered but rejected the possibility of including statutory provisions relating to the countryside and rights of way; compulsory purchase and compensation; hazardous substances; major infrastructure projects; approval under the Building Regulations¹⁰⁵; and various other self-contained codes.¹⁰⁶ As stated in the Explanatory Memorandum, the Welsh Government agrees with this position; as such, these matters have not been included in its consolidation exercise.¹⁰⁷

82. The Explanatory Memorandum provides a justification as to why the law relating to some other matters are not included in the Planning Bill, specifically: felling licenses; hedgerow removal; hazardous substances¹⁰⁸; compulsory purchase; infrastructure; environmental assessments; and building standards and safety.¹⁰⁹ Some of these matters are considered within this chapter.

83. Professor Alison Young, Law Commissioner for Public Law and the Law in Wales, expanded on the Law Commission's views on the scope of the consolidation exercise:

“... if you look at aspects of things like countryside, rights of way, felling and hedgerows, for example, you could see in some senses ... that these could also be part of planning. So, should they be part of planning law as well? But there's also a very good argument to say that they're not necessarily looking at the same kinds of issues as planning law. So, when you're thinking about aspects of the countryside and rights of way, you're thinking of very different purposes of those particular pieces of legislation. You're thinking much more about the protection of the countryside, public access to private land and pedestrian rights of way. And whilst there might be aspects that you would also think about in planning, planning is much broader than that, and can include other kinds of issues as well. So, we felt that, rather than putting these in the planning code, there would be a better justification to think about whether

¹⁰⁴ Law Commission, Planning Law in Wales Final Report, November 2018, paragraph 2.27

¹⁰⁵ The Building Regulations 2010 (No. 2214)

¹⁰⁶ Law Commission, Planning Law in Wales Final Report, November 2018, paragraph 2.29

¹⁰⁷ Explanatory Memorandum, paragraph 43

¹⁰⁸ Paragraphs 3 to 5 of the Counsel General's letter of 10 October 2025 to the Committee provide further information in respect of the consolidation of provisions contained within in the *Planning (Hazardous Substances) Act 1990* (c. 10).

¹⁰⁹ Explanatory Memorandum, paragraphs 44 to 55

they would be suited to a later, more specific code, looking at those aspects of countryside and the rights of way. ...

One of the downsides, which I can understand, of not putting them into a planning code is you might think, 'Well, obviously I'd need to think about these aspects when I was planning as well.' So, one of the things you can do in those situations is what we call signposting. So, you have a code, but when you put that on the website, you can signpost to, 'If you're thinking about things to do with rights of way, this is where you can find the laws in those areas.' That helps to improve accessibility while also making sure that sufficiently similar subjects are kept separate."¹¹⁰

84. She also stated:

"... another problem is that, as you've already seen, the Planning (Wales) Bill is already quite large, so if you don't have some kind of element of cutting things off and putting them in possible future codes, you could end up with a code that then almost becomes unworkable because it's too big. So, we're constantly trying to make these choices to see how best to improve accessibility."¹¹¹

85. In respect of the exclusion of legislation on hazardous substances from the consolidation exercise, RTPI Cymru said that the remit of the *Planning (Hazardous Substances) Act 1990* extends beyond land use planning, "so it makes sense to treat it separately".¹¹²

86. Annabel Graham Paul, representing the Planning and Environment Bar Association, stated:

"... you've got to stop somewhere. We can't have one Bill covering everything that we might ever need ... With something like planning, which does take in, as you say, environmental matters, potentially other things in relation to rights of way, village greens and things like commons, there's always going to

¹¹⁰ LJC Committee, 29 September 2025, RoP [230] to [232]

¹¹¹ LJC Committee, 29 September 2025, RoP [240]

¹¹² LJC Committee, 6 October 2025, RoP [118]

be a need to look to other pieces of legislation as well. I think the balance has been struck correctly in this case.”¹¹³

87. Planning Officers Society Wales told us that they believed that the Planning Bill “does cover the fundamental planning legislation that it needs to” and that they were “very happy with the content”.¹¹⁴

88. UKELA stated that it considered the scope of the Planning Bill to be appropriate¹¹⁵, and that it had not identified any obvious omissions in respect of the provisions being consolidated.¹¹⁶

Inclusion and exclusion of legislation

Exclusion of provision in the Habitats Regulations

89. The Law Commission, in its Planning Law in Wales consultation paper, considered whether legislation relating to the protection of the countryside may be included as part of the consolidation of planning law:

“The primary legislation relating to the protection of the countryside, public access to private land, and pedestrian rights of way is contained in largely the same group of Acts ...

These various statutory provisions might well be appropriate for codification insofar as they apply in Wales. And that code could be freestanding, as a Countryside and Rights of Way (Wales) Code, or it could form a further part of the Planning Code – although the former approach would seem to be preferable, given the relatively modest overlap between the two. However, in either case, they would need to be the subject of considerable further thought. And if the Welsh Government is contemplating further legislation relating to environmental matters, it would be sensible for such codification to follow the conclusion of that exercise.”¹¹⁷

¹¹³ LJC Committee, 6 October 2025, RoP [189]

¹¹⁴ LJC Committee, 13 October 2025, RoP [27]

¹¹⁵ PCB09 UKELA, paragraph 7

¹¹⁶ PCB09 UKELA, paragraph 8

¹¹⁷ Law Commission, Planning Law in Wales Consultation Paper, November 2017, paragraphs 3.101 and 3.102

90. In this context, it also referenced legislation in respect of the protection of species and habitats, and concluded that legislation in this area should not be included “at this stage” in the anticipated Planning Bill:

“Much of this law also links in with the legislation relating to protecting wildlife, which was the subject of a recent Law Commission review. That law is in turn strongly influenced by EU Directives relating to the protection of species and habitats, which are likely to be the subject of further review in light of Britain’s impending departure from the European Union.

For all those reasons, we recommend that this area of law is not included within the proposed Planning Code at this stage, but that it be kept under review and considered for codification in due course – either as further part of the Planning Code or as a separate Countryside and Rights of Way Code.”¹¹⁸

91. The Conservation of Habitats and Species Regulations 2017¹¹⁹ (the Habitats Regulations) transposed EU directives on habitats and wild birds into domestic law. Regulation 41 of the Habitats Regulations provide:

“(1) For the purposes of the relevant provisions¹²⁰, policies relating to the development and use of land or in respect of the conservation of the natural beauty and amenity of the land are to be taken to include policies encouraging the management of features of the landscape of the kinds described in paragraph (3). ...

(3) The features of the landscape referred to in paragraph (1) are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems of marking field boundaries) or their function as ‘stepping stones’ (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.

¹¹⁸ Law Commission, Planning Law in Wales Consultation Paper, November 2017, paragraphs 3.103 and 3.104

¹¹⁹ The Conservation of Habitats and Species Regulations 2017 (No. 1012)

¹²⁰ Regulation 41(2) of the Habitats Regulations provide that “relevant provisions” means sections 17(3) and 62(2)(b) of the 2004 Act and sections 12(3A), 31(3) and 36(3) of the 1990 Act.

(4) Where the Secretary of State considers it necessary, the Secretary of State must include in a national policy statement under Part 2 of the Planning Act 2008 (national policy statements) policy that encourages the management of features of the landscape of the kinds described in paragraph (3)."

92. Bannau Brycheiniog National Park Authority told us that the omission of this provision from the Planning Bill means that the scope of the consolidation is not appropriate.¹²¹ As part of its submission, it referenced the Welsh Government's position in respect of the Habitats Regulations:

*"... Environmental impact assessments including Habitats Regulations was ... considered as part of the work by the Law Commission on the scope of the Bill. It is ... acknowledged that the environmental assessment regime applies to various other contexts not just ones under the Planning Bill, as such they are not included in the consolidation Bill."*¹²²

93. In the view of Bannau Brycheiniog National Park Authority, the Welsh Government's position "misconstrues the significance of the Habitats Regulations, relating them primarily to environmental assessment activity". It continues:

*"Of more fundamental importance is that Regulation 41 sets the scope of development planning policy specifically to include encouraging the management of features of the landscape which may therefore reasonably be expected to be included within the Development Plan in Wales (at all tiers). This is reinforced by the title of ... [regulation 14] 'Nature conservation policy in planning contexts'."*¹²³

94. To inform our consideration, we invited other national park authorities to comment on the concerns raised by Bannau Brycheiniog National Park Authority.¹²⁴ In response to the concerns raised in respect of the Habitats Regulations, the Pembrokeshire Coast National Park Authority said that it understood that the relevant provision in the Habitats Regulations will continue to apply as a matter for a planning authority to have regard to in preparing its local

¹²¹ PCB07 Bannau Brycheiniog National Park Authority, page 4

¹²² PCB07 Bannau Brycheiniog National Park Authority, page 5

¹²³ PCB07 Bannau Brycheiniog National Park Authority, page 4

¹²⁴ Letter to the Chair of Eryri National Park Authority and the Chair of the Pembrokeshire Coast National Park Authority, 21 October 2025

development plan, in accordance with section 19 of the Planning Bill, and that there is “no requirement for a specific reference” in the Bill. However, it stated that it would welcome clarity from the Welsh Government in respect of this matter.¹²⁵

95. We asked the Counsel General to explain the Welsh Government’s rationale for not including this provision. In response, she stated:

“... in general, it is perfectly possible to make out that virtually every area of law relates to planning in some way. Most housing law relates to planning, most transport stuff relates to planning, so to some extent it has been a question of where are you drawing the edge. It’s a judgment call, isn’t it, where is the edge, and absolutely we have considered a number of things. The habitats regs is one of them, but there are others, actually, that could have been in or not in. And in the end, we’ve gone with the experts’ view on keeping this accessible, straightforward and simple as the primary aim, and then drawing the edges accordingly. But in all honesty, there’s very little you couldn’t say was part of planning law if you really wanted to push the boundaries.”¹²⁶

96. Dion Thomas, Head of Legislation and Performance at the Welsh Government’s Planning Directorate, explained in respect of the Habitats Regulations:

“This is a provision about planning policies and encouragement of management of landscapes, but equally there are requirements around economic development, sustainable development, biodiversity. Going back to the point, we have to draw that line somewhere, and we think we’ve drawn the line quite sensibly in that respect.

I would note, I guess, that stakeholders have come forward to the committee to say that they generally agree that the scope is appropriate. I’d also note that the UK Environmental Law Association didn’t raise this issue. But what they did put into their evidence was that they thought that it was very helpful to separate out the law, because with the consolidation of planning law being brought into one [correction: into one

¹²⁵ Letter from the Chair of the Pembrokeshire Coast National Park Authority, 10 November 2025

¹²⁶ LJC Committee, 3 November 2025, RoP [78]

place] and made simpler and clearer, they can then look at the relationships between two pieces of legislation a lot clearer, to then have the debate about whether it's appropriate or not appropriate and should it be strengthened, et cetera.”¹²⁷

Inclusion of provision on blighted land

97. Part 13 of the Planning Bill makes provision about blighted land. Specifically, it enables those whose land is affected by planning or other proposals to require the planning authority to purchase it.

98. CLA Cymru expressed that, in light of the non-inclusion of compulsory purchase and infrastructure legislation in the consolidation exercise, it did not believe that the inclusion of provision on statutory blight notices is appropriate:

“The use of such notices is overwhelmingly in cases of compulsory purchase or procedures related to it such as safeguarding orders. These are not elements of the planning system as defined in the explanatory memorandum.

The only case which, arguably, falls into the planning system so defined is that identified in Schedule 19 Part 1 Paragraph 1 of the Planning (Wales) Bill¹²⁸. However, such cases are extremely rare.

It would make more sense to us to include blight notices in a separate piece of consolidating legislation relating to compulsory acquisition.”¹²⁹

99. In the Counsel General’s letter of 28 October 2025, the Office of the Legislative Counsel responded to the view expressed by CLA Cymru:

“The Law Commission recommended including the blight provisions in the Planning Bill (recommendation 6-5), and the government accepted the recommendation in principle. The question was considered carefully during the preparation of the

¹²⁷ LJC Committee, 3 November 2025, RoP [79] to [80]

¹²⁸ Paragraph 1 of Schedule 19 sets out the first category of land that may give rise to an entitlement to serve a blight notice, specifically, land that has been identified by a strategic or local development plan (under Part 2 of the Bill) that is in the course of being examined or that has been adopted or approved; and land identified by a revision to such a plan that is being examined or has been adopted or approved.

¹²⁹ PCB05 CLA Cymru, paragraphs 8 to 11

Planning Bill, and on balance it was concluded that it was appropriate to regard the blight provisions as part of planning law and include them in the Bill. Although the provisions apply to things done under various other pieces of legislation, those things relate to the proposed development of land, and the provisions have always been included in the Town and Country Planning Acts.

Omitting the blight provisions from the Planning Bill would mean leaving them in the Town and Country Planning Act 1990 until they could be consolidated in another Bill. The 1990 Act would therefore continue to have some relevance to Wales, whereas the current approach taken in the Bill means that it will not. We do not think it would aid accessibility to amend the 1990 Act so that it applied only to England except for the Chapter about blight which would continue to apply to England and Wales.”¹³⁰

Potential inclusion of provision in the UK Government’s Planning and Infrastructure Bill

100. The Planning and Infrastructure Bill was introduced in the House of Commons on 11 March 2025 (six months before the introduction of the Bills). It provides for: infrastructure reforms; reforms to the planning system, Development Corporations and the compulsory purchase process and compensation rules; and defines a new strategic approach to nature recovery in relation to development.¹³¹

101. Between March 2025 and October 2025, the Welsh Government laid a series of legislative consent memoranda in respect of provision made in the Planning and Infrastructure Bill in relation to Wales that has regard to devolved matters.¹³² As a Committee, we laid four reports on the Welsh Government’s memoranda¹³³, and our reports considered the fact that none of the memoranda made reference to the Planning and Infrastructure Bill’s impact on the consolidation exercise.¹³⁴

¹³⁰ Letter from the Counsel General, 28 October 2025, Annex, paragraphs 5 and 6

¹³¹ See the UK Parliament’s [webpage for the Planning and Infrastructure Bill](#).

¹³² See the Senedd Cymru webpage, [Legislative Consent: Planning and Infrastructure Bill](#).

¹³³ See the Senedd Cymru webpage, [Legislative Consent: Planning and Infrastructure Bill](#).

¹³⁴ See paragraphs 44 to 46, and recommendation 4, of our May 2025 [report on the Welsh Government’s Legislative Consent Memorandum on the Planning and Infrastructure Bill](#); paragraphs 39 to 40, and recommendation 2, of our July 2025 [report on the Welsh Government’s Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Bill](#); and

102. The documents accompanying the Bills neither make reference to the Planning and Infrastructure Bill, as highlighted to us by Sara Hanrahan from Blake Morgan LLP.¹³⁵

103. In response to our first report in respect of the Planning and Infrastructure Bill, the Welsh Government stated that the amendments made by that Bill would not affect the content of the Planning Bill, and that it did not anticipate there being an issue with the timings of the Bills.¹³⁶ It further stated in response to our third report that if an issue with the timings of the Bills were to occur, and amendments would be required to the Planning Bill or the Consequential Provisions Bill, there were three potential ways for this issue to be dealt with:

“... firstly, by utilising the Detailed Senedd Consideration Stage the Business Committee has recently timetabled; secondly, by the UK Parliament amending its Bill; thirdly utilising a proposed power within the Planning (Consequential Provisions) (Wales) Bill that enables regulations to be made that would allow further provision to be made in connection with the principal Act and would therefore enable any necessary changes from the Planning and Infrastructure Bill to be made. The use of the power would of course be subject the Bill being passed by the Senedd.”¹³⁷

104. We asked the Counsel General to set out the relationship between the Bills and the Planning and Infrastructure Bill. She told us that the Welsh Government did not believe the interdependence between them was an issue¹³⁸, and Dr James George, Senior Legislative Counsel in the Office of the Legislative Counsel, explained why that was deemed to be the case:

“There are some references to the Planning and Infrastructure Bill in our Planning (Consequential Provisions) (Wales) Bill, because ... in some cases we need to make an amendment to a particular provision, and they’re also making an amendment to it, and what amendment each of us needs to make depends on who goes first. So, we sometimes have got alternative

paragraphs 35 to 40 of our October 2025 [report on the Welsh Government’s Supplementary Legislative Consent Memorandum \(Memorandum No. 4\) on the Bill](#).

¹³⁵ PCB11 Sara Hanrahan, Blake Morgan LLP, page 1

¹³⁶ [Letter from the Cabinet Secretary for Economy, Energy and Planning, 9 July 2025](#), response to recommendation 4

¹³⁷ [Letter from the Cabinet Secretary for Economy, Energy and Planning, 3 September 2025](#), response to recommendation 2

¹³⁸ LJC Committee, 3 November 2025, RoP [84]

versions of amendments in our consequential provisions Bill, depending on whether their amendment has already been made or not. That's something we did on the basis of their Bill, as it stood, when we introduced ours. I know their Bill has since had further amending stages—I think there's one that's concluding today. So, assuming that that Bill is passed, when we see the final text of it, we will need to assess what changes are needed. So, we may need to change some of the cross-references ...".¹³⁹

105. Dr George further stated that the likelihood of bringing of amendments forward to the Planning Bill for consideration at Detailed Committee Consideration was dependent “on whether the House of Commons accepts the House of Lords amendments to the Bill, and then it’ll depend on the timing”. However, he stated that the Welsh Government currently understood that the Planning and Infrastructure Bill should complete its passage in time for amendments to be brought forward at that stage.¹⁴⁰

Our view

106. We note the evidence received from the Counsel General, her officials, and from stakeholders in respect of the scope of the consolidation. In particular, we note the reasons provided by the Law Commission and the Counsel General for why some areas of law should not be, and have not been, included within the consolidation exercise.

Conclusion 1. We are satisfied that the scope of the consolidation is appropriate.

107. We note the representations made by some stakeholders in respect of the inclusion, and exclusion, of certain provisions within the consolidation, for example the Planning Bill’s inclusion of provision on blighted land, and its exclusion of provision contained in the Habitats Regulations.

108. We similarly note the reasons provided by the Counsel General and her officials for the approach taken towards the inclusion and exclusion of such provision, and are content.

Conclusion 2. We are satisfied that the relevant enactments have been included within the consolidation.

¹³⁹ LJC Committee, 3 November 2025, RoP [86]

¹⁴⁰ LJC Committee, 3 November 2025, RoP [92]

109. We note the Counsel General's evidence in respect of the Bills' interaction with the UK Government's Planning and Infrastructure Bill, and note that at the time of agreeing this report, the UK Government's Bill was yet to be passed. We believe that the Senedd should have clarity as soon as possible as to the effect of the Planning and Infrastructure Bill on the Bills.

Recommendation 2. During the debate on the Initial Consideration of the Bills, the Counsel General should provide the latest information about any amendments that will be required to be made to the Planning (Wales) Bill or the Planning (Consequential Provisions) (Wales) Bill as a consequence of the UK Government's Planning and Infrastructure Bill, should the Bills proceed to Detailed Committee Consideration.

4. Do the Bills correctly consolidate legislation, or change its substantive legal effect, only to the extent allowed by Standing Order 26C.2?

In accordance with Standing Order 26C.17, our consideration of the Bills has included an assessment of whether they correctly consolidate existing legislation, or change its substantive legal effect, only to the extent allowed by Standing Order 26C.2.

110. Standing Order 26C.2 provides that a Consolidation Bill may:

- (i) restate existing legislation with any changes of structure, language or format appropriate for the purpose of improving the presentation of the law and ensuring consistency with current drafting practice;
- (ii) clarify the application or effect of existing law;
- (iii) remove or omit provisions which are obsolete, spent or no longer of practical utility or effect;
- (iv) make minor changes to existing law for the purposes of achieving a satisfactory consolidation;
- (v) make other changes to the law which the Law Commission recommends are appropriate for inclusion within a Consolidation Bill; and
- (vi) include appropriate transitional and savings provisions, and consequential amendments and repeals of existing legislation (including amendments to ensure the existing legislation continues to operate correctly in relation to England).

Changes to the structure, language or format of existing law

Changes to the format of existing law

111. Annabel Graham Paul, representing the Planning and Environment Bar Association, noted that the drafting of the Planning Bill has provided clarity, for example, by its presentation of a table in section 113 of the Bill on the time limits for taking enforcement action in respect of certain breaches of planning controls.¹⁴¹

Changes to terminology

112. The Explanatory Memorandum states that, in consolidating the existing legislation:

“... every effort has been made to express legal concepts in language that is comprehensible and accessible, and that reflects current practice – both drafting and operational. This has sometimes proved to be a challenging task and has seen the replacement of some time-honoured terms.”¹⁴²

113. The Drafters’ Notes for the Planning Bill state:

“The Bill uses many of the same terms as the legislation it consolidates, and in particular continues to refer to local development plans and planning permission. However, it replaces some significant terms used in the existing legislation with new terms ... These changes do not have any substantive effect but are intended to ensure that the terminology is more accurate or helpful.”¹⁴³

114. A table listing the main changes to terminology reflected in the Planning Bill is also included in the Drafters’ Notes¹⁴⁴, and in correspondence to the Committee the Counsel General included a table setting out the rationale for the changes made and why they are considered to aid accessibility, and details of any consultation undertaken in respect of the proposed changes.¹⁴⁵

¹⁴¹ LJC Committee, 6 October 2025, RoP [165]

¹⁴² Explanatory Memorandum, paragraph 23

¹⁴³ Drafters’ Notes for the Planning Bill, paragraph 27

¹⁴⁴ Drafters’ Notes for the Planning Bill, paragraph 27

¹⁴⁵ Letter from the Counsel General, 10 October 2025, Annex 2

115. The Counsel General’s correspondence to the Committee also stated that, when a draft of the Bill was published in June 2025, the Welsh Government published a document outlining several of the proposed terminology changes, and brought the document to the attention of stakeholders. It confirmed that no queries or concerns were subsequently raised by stakeholders regarding the suggested changes to terminology.¹⁴⁶

116. Planning Officers Society Wales told us that, generally, they welcomed the improved terminology introduced by the Planning Bill, such as the replacement of the term “planning contravention notice” with “enforcement investigation notice”.¹⁴⁷

117. Charles Felgate from Geldards LLP similarly supported the change in terminology to “enforcement investigation notice” as he deemed it as a “less judgemental description in a process that is generally carried out at an early stage of any enforcement investigation without final decisions having been made.”¹⁴⁸

118. CLA Cymru, on the other hand, said that the proposed changes to terminology within the Planning Bill “undermine rather than support” the objective of improving the accessibility of planning law.¹⁴⁹ They stated that established key terms should be maintained¹⁵⁰, in line with those used in England, and that “using different phrases for the same concept in the two nations introduces potential confusion for no clear benefit”¹⁵¹. They further stated:

“It is absolutely in the national interest to make the planning system in general easier to understand for the lay person. Despite this, there will always be precise legal terms which will be used primarily by experts, even if these terms are made to resemble plain language. The Bills should consider these legal terms mainly with experts rather than the public in mind.”¹⁵²

¹⁴⁶ Letter from the Counsel General, 10 October 2025, paragraph 20

¹⁴⁷ LJC Committee, 13 October 2025, RoP [7]

¹⁴⁸ PCB03 Charles Felgate, Geldards LLP, page 2

¹⁴⁹ PCB05 CLA Cymru, paragraph 15

¹⁵⁰ PCB05 CLA Cymru, paragraph 18

¹⁵¹ PCB05 CLA Cymru, paragraph 17

¹⁵² PCB05 CLA Cymru, paragraph 19

The replacement of the term “material considerations” with “relevant considerations”

119. The Planning Bill replaces references in existing legislation to the term “material considerations” with “relevant considerations”.¹⁵³ The Explanatory Memorandum notes that the latter term is considered to be “a more commonly understood term and has the same legal effect” as the one it replaces.¹⁵⁴

120. The Explanatory Notes to the Planning Bill refer to decisions made by the Supreme Court that both terms have the same meaning:

“... see the decision of the Supreme Court in R (Health & Safety Executive) v Wolverhampton CC [2012] UKSC 34 at [26]. That court considered the meaning of the term more recently, in R (Wright) v Resilient Energy Severndale Ltd and Forest of Dean District Council [2019] UKSC 53, holding that considerations must serve a planning purpose (that is, one that relates to the character of the use of the land) and must fairly and reasonably relate to the development that is proposed.”¹⁵⁵

121. In correspondence to the Committee, the Counsel General confirmed that this change implements a recommendation made by the Law Commission in its report, Planning Law in Wales.¹⁵⁶ The Law Commission, in its report, stated:

“... we are not persuaded that the term ‘material considerations’ is generally well understood. It may well be understood by those, such as planning authorities, planning consultants and lawyers, who have operated the planning system over many years. But there will be others – new entrants, third sector groups and individual land owners – who will not be familiar with the technical terms used. Whilst some may be unavoidable, the number of such terms should be minimised. We remain of the view that the phrases ‘development plan, so

¹⁵³ For example, section 70(2) of the 1990 Act provides that, in determining an application for planning permission, a local planning authority shall have regard to: certain considerations, “so far as material to the application”; and “any other material considerations.” This provision’s restatement within section 66(1) of the Planning Bill provides that, in determining an application for planning permission, a planning authority must “have regard to the development plan for its area and any other relevant considerations”, and “make its decision in accordance with the development plan unless other relevant considerations indicate otherwise”.

¹⁵⁴ Explanatory Memorandum, paragraph 23

¹⁵⁵ Explanatory Notes to the Planning Bill, paragraph 260

¹⁵⁶ Letter from the Counsel General, 10 October 2025, Annex 2

*far as relevant' and 'other relevant considerations' are likely to be more widely understood amongst users of the planning system generally. And guidance can emphasise that the term 'relevant', in this context, is identical to the old term 'material'."*¹⁵⁷

122. The Law Commission's report also cited the views of Keith Bush KC, who highlighted that the word "relevant" is "easier to convey bilingually", as "perthnasol" "easily conveys the same meaning" as "relevant".¹⁵⁸

123. In correspondence, the Counsel General noted:

"... we consider that using 'relevant considerations' does not involve any change in the law. That should be clear, because the change of terminology reflects how the existing law has been interpreted by the courts. If the Bill is enacted, guidance to be published by the Welsh Government ... along with updates to existing guidance to reflect the Bill, can also explain this point.

*As well as being used in the Planning (Wales) Bill, the phrase 'relevant considerations' has already been used in both the Historic Environment (Wales) Act 2023 and the Infrastructure (Wales) Act 2024. No concerns have been raised about that, and we consider it desirable to maintain consistency between these related pieces of legislation."*¹⁵⁹

124. RTPI Cymru told us this matter of terminology was not "necessarily a problem that needed fixing", but:

*"... we've certainly got no objection to the proposed change, although we would ask that the explanatory note that states that 'relevant' has the same meaning as 'material' be added to the Act to make that clear. So, perhaps, in the definitions ... it could be included there, just to make that bullet-proof, if you like."*¹⁶⁰

¹⁵⁷ Law Commission, Planning Law in Wales Final Report, November 2018, paragraph 5.68

¹⁵⁸ Law Commission, Planning Law in Wales Final Report, November 2018, paragraph 5.61

¹⁵⁹ Letter from the Counsel General, 28 October 2028, point 1

¹⁶⁰ LJC Committee, 6 October 2025, RoP [126]

125. In written evidence, the Planning and Environment Bar Association said that it was “neutral as to the desirability” of making this a change, and stated that the views of individuals within its organisation on the matter will differ.¹⁶¹ For example, its representative, Annabel Graham Paul, raised with us in oral evidence the following issues in respect of the introduction of the term “relevant considerations”:

“Does that necessarily mean the same thing? If it does, make absolutely clear it does mean the same thing. So, there could be an element of doubt over something like that, but hopefully it can be made sufficiently clear that it is intended to mean the same thing.

... I don't think [the change] it's needed. I think we all know what material considerations are and I don't think that that word 'material' is particularly problematic. But I think that sort of thing is the only thing where I would query whether there is a risk in terms of consolidation and whether you're moving into change rather than simply consolidating.”¹⁶²

126. Charles Felgate from Geldards LLP expressed his view that, on balance, the suggested change would have the “counter intuitive effect” of making the law less accessible, saying:

“I doubt this will achieve the simplification that is intended. I can appreciate that it may be a more accurate and accessible description intended to mean the same thing. However I have concerns that non-technical people will be able to access the whole body of case law that exists on material considerations without very technical knowledge that the two things are one and the same.”¹⁶³

127. CLA Cymru expressed a similar view:

“We agree that the phrase ‘material consideration’ would not carry any clear meaning to the lay person, but we disagree that the phrase ‘relevant consideration’ is better. We do not consider that there is an alternative phrase which would make the concept of a material consideration clear to someone who is

¹⁶¹ PCB10 Planning and Environment Bar Association

¹⁶² LJC Committee, 6 October 2025, RoP [167] and [168]

¹⁶³ PCB03 Charles Felgate, Geldards LLP, page 2

*not already familiar with the planning system. This is because a 'material consideration' is a technical concept which requires some working knowledge of the planning system regardless of what it is called."*¹⁶⁴

128. While they were not "necessarily" opposed to this proposed change¹⁶⁵, Planning Officers Society Wales told us that they did not believe there was a "particular need" to change the reference. They explained:

*"We're obviously working with community councils, with county councillors and the general public, and we've spent many years explaining what a 'material consideration' is, and we're a little bit concerned that we're going to have to spend a lot of time explaining what a 'relevant consideration' is, and that perhaps that's not a necessary change."*¹⁶⁶

129. Planning Officers Society Wales also raised similar concerns to those raised by Annabel Graham Paul in relation to potential "issues going forward, particularly around legal arguments".¹⁶⁷

130. Nonetheless, they noted that the explanatory documents accompanying the Bills "make a valid argument" in favour of making this change in terminology:

*"... in terms of the fact that the translation of the term would be easier, because 'material' means different things in different parts of the legislation. So, you've got a material change of use, meaning significant change of use, in my view. Then you've got material considerations, which they're arguing means relevant considerations. And when you look at the bilingual translation of those, it would be simpler to have them separated out."*¹⁶⁸

131. In oral evidence, the Counsel General confirmed the Welsh Government's position in respect of this change in terminology:

"... it's just an easier phrase to understand. We've used it in other legislation. We think it's as comprehensive as 'material considerations'. We think that's a less accessible phrase. Other views will exist. But, for example, I took the infrastructure Bill

¹⁶⁴ PCB05 CLA Cymru, paragraph 16

¹⁶⁵ LJC Committee, 13 October 2025, RoP [33] and [34]

¹⁶⁶ LJC Committee, 13 October 2025, RoP [20]

¹⁶⁷ LJC Committee, 13 October 2025, RoP [34]

¹⁶⁸ LJC Committee, 13 October 2025, RoP [34]

*through and that used 'relevant considerations' as the terminology."*¹⁶⁹

132. Dr James George, Senior Legislative Counsel in the Office of the Legislative Counsel, added:

*"... obviously we do think 'material' and 'relevant' mean exactly the same thing, but also that has been confirmed by the highest court. The Supreme Court has made decisions where it says, 'What's material? Well, it's just what's relevant'."*¹⁷⁰

Changes for the purpose of clarifying the application or effect of existing law

Incorporation of common law

133. In accordance with Standing Order 26C.1, common law (also described as case law) can be included in a consolidation exercise. The Llywydd's guidance on Consolidation Bills note that "it may be appropriate to incorporate case law that affects the operation of existing legislation, for example by clarifying its meaning or by expanding or limiting its effect in a way that is not set out on its face".¹⁷¹

134. The Counsel General told us in correspondence that, in respect of the Bills:

*"... where there is settled case law affecting the operation of legislation within the scope of the consolidation exercise, we have sought to incorporate its effect. Doing so increases the provisions' accessibility and provides a more complete restatement. It is the desirability of making the law as accessible and complete as possible that has caused us to incorporate this specific case law, not a desire to incorporate common law rules in and of itself."*¹⁷²

135. The table of origins and Drafters' Notes for the Planning Bill identify the provisions of the Bill that incorporate the effect of case law, and, in correspondence, the Counsel General also provided a summary of the case law that has been incorporated into the Bill.¹⁷³

¹⁶⁹ LJC Committee, 3 November 2025, RoP [97]

¹⁷⁰ LJC Committee, 3 November 2025, RoP [104]

¹⁷¹ Llywydd's Guidance to support the operation of Standing Order 26C, October 2021, paragraph 7

¹⁷² Letter from the Counsel General, 10 October 2025, paragraph 8

¹⁷³ Letter from the Counsel General, 10 October 2025, Annex 1

Section 319 – Right to compensation for effects of certain planning decisions and orders

136. Section 319 of the Planning Bill, which originates from section 279 of the 1990 Act, provides that a statutory undertaker is entitled to compensation from a planning authority in respect of certain decisions made to refuse planning permission.

137. In its restatement of section 279(7) of the 1990 Act, subsection (5)(b) of section 319 of the Bill adds a provision that mandatory conditions relating to the duration of minerals permissions must be ignored. According to the Drafters' Notes, this in the same way as conditions relating to when development must start or reserved matters must be approved must be ignored. They also state that the change "fills a gap and ensures consistency with the equivalent provision in relation to purchase notices in section 110(4)" of the Bill, and indicate that the change is made in accordance with Standing Order 26C.2(ii).¹⁷⁴

138. The Counsel General told us that the reference to Standing Order 26C.2(ii) in respect of this change was a "mistake"¹⁷⁵ and Dr James George said that, as the addition of this provision was a minor change to existing law for the purpose of achieving a satisfactory consolidation, the reference should instead be to Standing Order 26C.2(iv).¹⁷⁶ He also confirmed that, with the Counsel General's permission, this mistake would be corrected when the Drafters' Notes are relaid.¹⁷⁷

Section 408 – Interpretation

139. Section 408 of the Planning Bill contains definitions for terms used in the Bill, and includes cross-references to definitions included elsewhere in the Bill.

140. Subsection (3) of section 408 restates section 70(2)(aa) of the 1990 Act, but also includes a provision that a duty to have regard to the development plan and other relevant considerations requires a person to have regard to national planning policies and considerations relating to use of the Welsh language, so far as they are relevant. The Drafters' Notes state that this change gives effect to recommendations 5-5 and 5-6 in the Law Commission's report, *Planning Law in Wales*, and:

¹⁷⁴ Drafters' Notes for the Planning Bill, page 122

¹⁷⁵ LJC Committee, 3 November 2025, RoP [111]

¹⁷⁶ LJC Committee, 3 November 2025, RoP [114]

¹⁷⁷ LJC Committee, 3 November 2025, RoP [114]

“Clarifies that Welsh language issues may be relevant in all cases where such a duty applies (whereas section 70(2)(aa) of the 1990 Act is currently expressed to apply only when deciding planning applications), and that national planning policies may be a relevant consideration.”¹⁷⁸

141. In addition, the Explanatory Notes to the Bill state that the national policies referred to in subsection (3) would include Planning Policy Wales (PPW) and the series of technical advice notes (TANs) published by the Welsh Government.¹⁷⁹

142. In respect of this change, and the explanation provided in the Explanatory Notes, Charles Felgate from Geldards LLP told us:

“That change resolves some confusion about what status PPW and TANs actually have in law. I support the way in which this is done so as not to determine, statutorily, what weight should be given to them. My concern with the change however is its location – it is buried deep within the interpretation section of the Bill, and would be far more accessible if it were moved into the main body of the provisions that deal with matters to be taken into account in determining planning applications, such as the current s66(1). It needs to be made clear that “having regard” to PPW and TANs is a statutory requirement.”¹⁸⁰

143. In the Counsel General’s letter of 28 October 2025, the Office of the Legislative Counsel addressed this matter:

“... as explained in the Drafters’ Notes, section 408(3) applies to all of the provisions of the Bill that impose a duty to have regard to the development plan and ‘any other relevant considerations’, not only those relating to applications. Moreover, section 408(3) merely puts beyond doubt that national planning policies and Welsh language considerations may be relevant considerations, so we consider that it is appropriate to include it in the interpretation section.”¹⁸¹

¹⁷⁸ Drafters’ Notes for the Planning Bill, pages 156 and 157

¹⁷⁹ Explanatory Notes to the Planning Bill, paragraph 1801

¹⁸⁰ PCB03 Charles Felgate, Geldards LLP, page 2

¹⁸¹ Letter from the Counsel General, 28 October 2025, Annex, paragraph 2

Schedule 5 – Condition limiting duration of minerals permission

144. Schedule 5 of the Planning Bill, which originates from Schedule 5 and section 336 of the 1990 Act, provides for conditions as to the duration of minerals permissions.¹⁸²

145. In its restatement of paragraph 1(4) of Schedule 5 to the 1990 Act, paragraph 1(4) of Schedule 5 to the Planning Bill adds a wording stating that the power to amend the 60-year periods specified in the Schedule includes the power to amend the Schedule. According to the Drafters' Notes, this addition is made in accordance with Standing Order 26C.2(iv), and "improves accessibility by ensuring that any regulations amending the periods will be able to amend the text of the Schedule so that it refers to the correct periods."¹⁸³

146. When we asked the Counsel General whether she considered that Standing Order 26.C(ii) is also engaged in respect of this change, she invited Dr James George to respond on her behalf.¹⁸⁴ He stated that the Welsh Government was content that only Standing Order 26C.2(iv) is engaged by this change, and explained:

*"... paragraph 1(4) of Schedule 5 to the Town and Country Planning Act already allows the regulations to be made to modify this default 60-year duration of a minerals permission. Now, at the moment, if regulations were made, that change would just sit in the regulations. We're making a change to say that you could make the change by actually amending the provision in the Act itself, so that the text would reflect the new period. So, obviously, we think that that results in a more accessible outcome because the legislation will mean what it says. But we think that that change is not really a clarification of the existing law. It's a slight extension of an existing power. So, we think that it's best described as a minor change for the sake of achieving a satisfactory consolidation."*¹⁸⁵

¹⁸² Section 408 (Interpretation) of the Bill provides that "minerals permission" means planning permission for minerals development, but does not include permission granted by development order.

¹⁸³ Drafters' Notes for the Planning Bill, page 36

¹⁸⁴ LJC Committee, 3 November 2025, RoP [119]

¹⁸⁵ LJC Committee, 3 November 2025, RoP [120]

The removal or omission of provisions which are considered obsolete, spent or no longer of practical utility or effect

147. As stated at paragraph 11, the *Legislation (Procedure, Publication and Repeals) (Wales) Act 2025* repealed and amended certain redundant planning provisions in existing legislation in order to avoid having provisions relating to those repeals being included in the Planning Bill.

148. Further to these provisions, and as stated in the Explanatory Memorandum, the Bills remove or omit provisions from the existing legislation where they are obsolete, spent or no longer of practical utility or benefit.¹⁸⁶ The Drafters' Notes for the Planning Bill and for the Consequential Provisions Bill include details on such provisions.

Section 137 – Recovery of costs of compliance with enforcement notice; and section 258 – Recovery of costs of planting trees

149. Section 137 of the Planning Bill enables a planning authority to recover any costs it has reasonably incurred in exercising its powers under section 136 of the Bill, which enables it to enter land and to take steps required by an enforcement notice. Its provisions originate from section 178 of the 1990 Act, regulation 14 of the Town and Country Planning General Regulations 1992¹⁸⁷, and sections 276 and 294 of the *Public Health Act 1936*¹⁸⁸ (the 1936 Act).

150. Similarly, section 258 of the Planning Bill enables a planning authority to recover any costs it has reasonably incurred in exercising its powers under section 257, which enables it to enter land and plant trees to ensure compliance with a tree replacement notice. Its provisions originate from sections 209 and 213 of the 1990 Act, regulation 14 of the Town and Country Planning General Regulations 1992, and sections 276 and 294 of the 1936 Act.

151. In its restatement of section 276 of the 1936 Act, subsections (7) and (8) of section 137 of the Bill omit section 276(3) of that Act, which provides that the section does not apply to “refuse” removed by a local authority. The Drafters' Notes state that this change is made in accordance with Standing Order 26C.2(iii), and provide the following additional information:

“The exclusion of refuse seems to have been intended to avoid conflict between section 276 and other provisions of the 1936

¹⁸⁶ Explanatory Memorandum, paragraph 24

¹⁸⁷ *The Town and Country Planning General Regulations 1992 (No. 1492)*, regulation 14

¹⁸⁸ *Public Health Act 1936* (c. 49)

Act that allowed authorities to sell refuse they collected without requiring them to account for the proceeds. It seems irrelevant and unnecessary where an authority has removed materials in the course of taking steps required by an enforcement notice.”¹⁸⁹

152. In the same way, subsections (7) and (8) of section 258 of the Bill omit section 276(3) of the 1936 Act in its restatement. The Drafters’ Notes state that this change is also made in accordance with Standing Order 26C.2(iii), and provide the following additional information:

“The exclusion of refuse seems intended to avoid any conflict between section 276 and other provisions of the 1936 Act allowing waste to be sold. It does not seem relevant or necessary where an authority does work to plant trees.”¹⁹⁰

153. We asked the Counsel General to provide further detail and clarity in respect of this omission of subsection (3) of section 276 of the 1936 Act in section 137 of the Bill. In response, she said that a similar change was dealt with in the Bill which became the 2023 Act, and invited Dr James George to provide a fuller explanation.¹⁹¹ He stated:

“... it’s about cases where an enforcement notice hasn’t been complied with, and a planning authority sends somebody onto the land to do the things that the enforcement notice required. There are regulations that have been made that apply certain provisions of the Public Health Act 1936 in that situation, which includes section 276. Section 276 says that, if a local authority removes materials from premises when doing works under the 1936 Act, it can sell the materials but has to pay the proceeds to the owner of the materials, once it has taken out its own costs of doing the works. Subsection (3), which is the bit we’ve left out, then says that that doesn’t apply to any refuse that an authority removes from premises. So, we think that that exception for refuse made sense in the context of the 1936 Act when it was originally enacted, and it might still be relevant in the context of waste collection. But we don’t think that it’s relevant in a case where an authority is going onto land to do

¹⁸⁹ Drafters’ Notes for the Planning Bill, page 60

¹⁹⁰ Drafters’ Notes for the Planning Bill, page 105

¹⁹¹ LJC Committee, 3 November 2025, RoP [123]

works required by an enforcement notice. The reason that we think that is that Part 2 of the 1936 Act used to be the legislation that gave local authorities all their waste collection powers. That included section 76, which gave the authorities a separate power to sell the refuse that they removed from premises. But there wasn't any duty to account for the proceeds to the owner in section 76, whereas there is one in section 276.

So, if an authority wanted to sell refuse, there would potentially be a conflict between the two sections: if you sell the refuse, do you have to account to the owner for the proceeds or not? So, we think that section 276(3) was just there to resolve that conflict and make clear which provision applied in that case. None of that is relevant if an authority is going onto land to take down a structure that's been put up in breach of planning control, and an enforcement notice hasn't been complied with, and you're taking away the building materials. The authority when it's doing that is not acting as a waste collection authority, so that's why we think section 276(3) doesn't need to apply in that situation.”¹⁹²

154. The Counsel General and Dr George confirmed that the omission of subsection (3) of section 276 of the 1936 Act in section 258 of the Bill was made on the same basis as for section 137 of the Bill.¹⁹³

Minor changes to existing law for the purpose of achieving a satisfactory consolidation

Correction of anomalies

155. The Llywydd's guidance on Consolidation Bills states that minor changes to existing law made by a Consolidation Bill, for the purposes of achieving a satisfactory consolidation, may include correcting mistakes or anomalies in the legislation.¹⁹⁴ The Counsel General, in her letter of 10 October 2025, provided further detail on the Planning Bill's correction of anomalies in existing legislation.¹⁹⁵

¹⁹² LJC Committee, 3 November 2025, RoP [126] and [127]

¹⁹³ LJC Committee, 3 November 2025, RoP [129] and [130]

¹⁹⁴ Llywydd's Guidance to support the operation of Standing Order 26C, October 2021, page 11

¹⁹⁵ Letter from the Counsel General, 10 October 2025, paragraphs 15 to 18

Section 105 – Compensation for refusal or conditional grant of planning permission previously granted by order

156. Section 105 of the Planning Bill, which originates from sections 107 and 108 of the 1990 Act, provides that persons interested in land suffering from loss or damage as a result of a planning permission previously granted by development order or local development order, and later withdrawn – or as a result of the refusal or conditional grant of planning permission previously granted by order – are entitled to compensation in certain circumstances.

157. Subsection (9) of section 105 includes within its restatement of section 108(4) of the 1990 Act a reference to a local development order that would have been inserted by section 40(2)(h) of the 2004 Act. The Drafters' Notes state that this change is made in accordance with Standing Order 26C.2(iv), and provide the following additional information:

“Section 40(2)(h) of the 2004 Act, which inserted a reference to a local development order into section 108(4) of the 1990 Act, was repealed by the 2011 Act shortly before section 40 was brought fully into force in Wales by SI 2012/1100. The intention must have been that the amendment to section 108(4) should take effect in Wales.”¹⁹⁶

158. We asked the Counsel General to explain whether the Welsh Government was aware of any person missing out on compensation by this omission, and whether she considers this fact to be an example of the reason for why the consolidation of the legislation is necessary. In response, the Counsel General stated that there were no persons affected by this omission, and she confirmed that this fact was an example of the reason for why the consolidation of the legislation is necessary.¹⁹⁷ Dr James George provided further detail:

“... section 108(4) [of the 1990 Act] is just a power for Ministers to make regulations that would limit rights to compensation in certain cases, but no regulations have actually been made, so at the moment this doesn't affect anybody. If Ministers at some point in the future did want to make regulations, this would just mean that the regulations worked better in the context of that section.”¹⁹⁸

¹⁹⁶ Drafters' Notes for the Planning Bill, pages 43 and 44

¹⁹⁷ LJC Committee, 3 November 2025, RoP [139]

¹⁹⁸ LJC Committee, 3 November 2025, RoP [140]

Section 116 – Powers to enter land for enforcement purposes

159. Section 116 of the Planning Bill, which originates from sections 196A and 196C of the 1990 Act, enables persons authorised by a planning authority to enter land in certain circumstances for enforcement purposes.

160. In its restatement of section 196A(2) of the 1990 Act, subsection (2) of section 116 of the Bill adds a power for the Welsh Ministers to authorise entry on land to determine whether a stop notice¹⁹⁹ should be issued. The Drafters' Notes state that this change is made in accordance with Standing Order 26C.2(iv), and “rectifies an anomaly”:

“Under Part 7 of the 1990 Act, the Welsh Ministers may issue enforcement notices and serve stop notices, while planning authorities have a wider range of enforcement powers. Both were previously able to authorise entry under section 324(1) in connection with any proposal to issue or serve a notice under Part 7 (including a stop notice). Section 11 of the 1991 Act gave planning authorities wider powers of entry but replaced the Welsh Ministers’ power with the power in section 196A(2) that is limited to determining whether an enforcement notice should be issued. No reason for omitting the reference to stop notices has been identified. The only reason given for the changes made by the 1991 Act was to broaden the powers of entry of planning authorities: see Carnwath, Enforcing Planning Control (1989), chapter 7 paragraph 2.1; HL Deb vol 524 col 1358-1360 (13 January 1991).”²⁰⁰

161. We asked the Counsel General to clarify why it is considered appropriate to address this apparent anomaly on the ground that it is a minor change for the purpose of achieving a satisfactory consolidation. Dr James George answered on behalf of the Counsel General:

“We do think it’s a minor change just to fill in a small gap that was created by accident in 1991. Before then, as we said in the drafters’ notes, local planning authorities and the Welsh Ministers both had powers to authorise entry onto land in

¹⁹⁹ Section 408 (Interpretation) of the Bill provides that a “stop notice” means a notice issued under sections 145 or 150 of the Bill. These sections enable, in certain circumstances, a planning authority or the Welsh Ministers to require activity that is considered to be in breach of planning control to stop.

²⁰⁰ Drafters' Notes for the Planning Bill, page 53

connection with proposals to issue notices under any of the enforcement provisions in the 1990 Act. So, that definitely included authorising entry to decide whether to issue a stop notice. There were then some changes made in 1991, and the result of that is local authorities still have all the powers they had before, and more, and the Welsh Ministers still have the power to authorise entry to decide whether to issue an enforcement notice, but not a stop notice.

Now, entering land to decide whether to issue either of those notices will generally involve considering the same issues about whether there's an ongoing breach of planning control. And each stop notice has to be linked to a specific enforcement notice anyway. So, really the only additional issue that you're considering when you decide whether to issue a stop notice is whether there's an ongoing breach that needs to stop sooner than it would otherwise. So, we don't think actually adding a power to enter land in connection with that particular issue of whether to issue a stop notice really adds very much at all to what can be done already, but still there is a slight anomaly there, or gap, which we think it makes sense to fill to produce a more coherent picture."²⁰¹

Section 186 – Collection and payment of the community infrastructure levy; and section 187 – Enforcement: general

162. Section 186 of the Planning Bill sets out the provision that regulations made under section 171 of the Bill must and may include in respect of the collection and payment of the community infrastructure levy (CIL). Section 187 of the Bill sets out the provision that such regulations must and may make in respect of the enforcement of CIL. The provisions of sections 186 and 187 originate, respectively, from sections 217 and 218 of the *Planning Act 2008* (the 2008 Act).

163. In their restatement of sections 217(6) and 218(6)(a) of the 2008 Act, sections 186(6) and 187(2)(a) of the Bill amend provisions enabling the replication or application of any enactment relating to the collection of tax so that they are limited to enactments relating to the collection of local taxes. The Drafters' Notes state that these changes are made in accordance with Standing Order 26C.2(iv), and provide the following explanation:

²⁰¹ LJC Committee, 3 November 2025, RoP [143] and [144]

“Limiting the ability to replicate or apply enactments to those relating to the collection of local taxes seems more appropriate as CIL is similar to a local tax. A wider power would allow the application of enactments relating to the collection of non-devolved taxes, which seems neither appropriate nor necessary.”²⁰²

164. We asked the Counsel General whether a more appropriate consolidation would have been to refer to ‘devolved taxes whether local or otherwise’, and whether the views of the Law Commission had been sought in respect of this change. Dr James George answered on behalf of the Counsel General:

“So, we have narrowed the powers that currently exist. ... our view and the view of policy colleagues was that CIL is like a local tax—it’s imposed, collected and enforced by local authorities. It will be different in different areas. And the provision that’s in the existing CIL regulations about collection is very similar to the legislation about collection of council tax and non-domestic rates, which are obviously the local taxes that exist.

So, the conclusion that we reached was that we didn’t need any more. We didn’t need it to be any wider than applying the legislation about collecting local taxes, so that’s why we narrowed it in that way. It would have been possible, obviously, to say that you can apply enactments about the collection of any devolved taxes, local or not, but we just didn’t think that was necessary, given the nature of the community infrastructure levy.

And on the question about whether we’ve spoken to the Law Commission about it, we didn’t speak to the Law Commission because we thought this was a minor change that we could make under the Standing Order without needing a recommendation from them that we could do it.”²⁰³

²⁰² Drafters’ Notes for the Planning Bill, pages 73 and 74

²⁰³ LJC Committee, 3 November 2025, RoP [151] to [153]

Changes to the law recommended by the Law Commission

165. The Planning Bill gives effect to a number of recommendations made by the Law Commission in its report, *Planning Law in Wales*.²⁰⁴ In correspondence to the Committee, the Counsel General set out which recommendations of that report it had identified as those which would need to be addressed, or considered for inclusion, in a separate “law reform Bill” (or Public Bill, introduced under Standing Order 26).²⁰⁵

166. As stated in the Drafters’ Notes for the Bill:

“The fact that a change was recommended in the Law Commission’s report does not necessarily mean that reliance is being placed on paragraph (v) of Standing Order 26C.2, which allows a consolidation Bill to make changes in the law which the Law Commission recommends “are appropriate for inclusion within a consolidation Bill”. In most of the cases where the Welsh Government has made changes to give effect to recommendations in the report, it has relied on other paragraphs of Standing Order 26C.2.

The Welsh Government sought recommendations under paragraph (v) only where it considered that no other paragraphs of Standing Order 26C.2 applied. In a letter to the First Minister dated 16 May 2024, the Chair of the Law Commission identified 15 changes that were suitable for inclusion in a consolidation Bill under paragraph (v).”²⁰⁶

167. The Law Commission’s letter of 16 May 2024²⁰⁷ was later supplemented by a letter of 23 July 2025 to the First Minister²⁰⁸ which clarified some matters raised in the 2024 letter.

168. The tables of origins and destinations for the Planning Bill set out where the recommendations made by the Law Commission in its letter of 16 May 2024 have been given effect. The Drafters’ Notes for the Bill also include this information, in

²⁰⁴ Law Commission, *Planning Law in Wales Final Report*, November 2018

²⁰⁵ Letter from the Counsel General, 10 October 2025, paragraphs 11 and 12

²⁰⁶ Drafters’ Notes for the Planning Bill, paragraphs 8 and 9

²⁰⁷ [Letter from the Law Commission to the First Minister, 16 May 2024](#)

²⁰⁸ [Letter from the Law Commission to the First Minister, 23 July 2025](#)

addition to details on where other changes also give effect to recommendations made in the Planning Law in Wales report.

169. Professor Alison Young, Law Commissioner for Public Law and the Law in Wales, told us that the Law Commission had undertaken a consideration of how the recommendations made in its letter of 16 May 2024 had been replicated in the Bill, and it was “very happy” that there was nothing in the Bills that had gone further than what was recommended, or that had been omitted.²⁰⁹

Changes to subordinate legislation procedures, the movement of provisions between subordinate and primary legislation, and new regulation-making powers provided to the Welsh Ministers

170. As stated at paragraph 14, the Planning Bill incorporates some provisions of subordinate legislation made under the Acts being consolidated. The Drafters’ Notes for the Bill explain where such material has been included, and provide additional detail:

“Where there might be a need to amend provisions that have been moved from subordinate legislation to the Bill, the Bill retains powers to make amendments in regulations ... Section 407(7) provides for regulations that amend the Bill itself to be subject to the Senedd approval procedure.”²¹⁰

171. The table of origins and the table of destinations for the Planning Bill set out the subordinate legislation being consolidated, and the Drafters’ Notes for the Bill include details of provisions currently in Acts that will (or may) now be dealt with in subordinate legislation.²¹¹

Changes to subordinate legislation procedures

172. The Drafters’ Notes for the Planning Bill sets out where different procedures have been applied to regulation-making powers restated in the Bill. In all cases, the relevant regulations will be subject to a greater degree of scrutiny than under the enactments being consolidated:

²⁰⁹ LJC Committee, 29 September 2025, RoP [208]

²¹⁰ Drafters’ Notes for the Planning Bill, paragraph 6

²¹¹ As stated in paragraph 25 of the Counsel General’s letter of 10 October 2025, these provisions are contained in sections 63 and 97, paragraph 6 of Schedule 8, paragraphs 5(6), 5(7) and 13 of Schedule 9, and sections 131(8), 133, 162, 172(3) and 244.

- regulations under paragraph 1(9) of Schedule 3, which change the aftercare period or default duration of minerals permission, will be subject to the Senedd approval procedure, instead of the annulment procedure;
- regulations under section 6(6), which specify classes within which changes of use are not development (also described as use classes regulations), will be subject to the Senedd annulment procedure, instead of no procedure;
- regulations under section 8(1), which enable joint planning boards to be established, will be subject to the Senedd annulment procedure, instead of no procedure; and
- regulations under section 306(3), which change the definition of “operational land” of universal postal service providers, will be subject to the approval procedures of the Senedd and the UK Parliament, instead of annulment procedures.²¹²

The movement of provisions between subordinate and primary legislation

173. In her letter of 10 October 2025, the Counsel General set out the Welsh Government’s approach towards achieving a balance between containing provisions in the Planning Bill and within subordinate legislation:

“Considerable thought has been given to achieving the correct balance ... in the consolidation process, with provisions being considered on a case-by-case basis, taking into account matters such as:

- a. the importance of the provisions both in terms of their significance to planning law and to the flow of the Bill (whether inclusion in the Bill would achieve a more coherent regime or would disrupt accessibility);*
- b. the need to deal with similar provisions in a similar way, so that there is consistency in approach to the split between primary and secondary legislation;*

²¹² Drafters’ Notes for the Planning Bill, page 154

- c. *whether secondary legislation included modifications of primary legislation that would be better dealt with in the Bill; and*
- d. *whether significant provisions in secondary legislation had not changed for some considerable time.*²¹³

174. The Counsel General's letter also explained that, overall, more provision has been moved from regulations to the face of the Bill, and that a smaller number of provisions have been moved from primary legislation and will instead be included in subordinate legislation. The letter also provides examples of such provision.²¹⁴

New regulation-making powers provided to the Welsh Ministers

175. In oral evidence, the Counsel General confirmed that none of the new powers to make subordinate legislation in the Planning Bill enable the Welsh Ministers to make policy changes.²¹⁵ Dr James George elaborated:

*"... there is a small number of new regulation-making powers, and they're mainly about procedural-type matters. One of them is, say, section 72(4) of the Planning (Wales) Bill, which confers a new power to require the Welsh Ministers to notify applicants that their applications have been called in. Then we've got paragraph 6 of Schedule 8 and paragraph 13 of Schedule 9, which are powers to make provision about using electronic communications in connection with certain kinds of applications. So, those are just minor procedural matters of the kind that are dealt with in subordinate legislation anyway."*²¹⁶

Our view

176. We note the evidence received from the Counsel General, her officials, and from stakeholders in respect of the changes made to existing law by the Bills.

177. We acknowledge the range of views expressed to us in respect of the introduction of the new term "relevant considerations", and, in particular, questions raised about whether the term has the same meaning as the one it replaces, "material considerations". However, we note the decisions made by the

²¹³ Letter from the Counsel General, 10 October 2025, paragraph 23

²¹⁴ Letter from the Counsel General, 10 October 2025, paragraphs 26 and 27

²¹⁵ LJC Committee, 3 November 2025, RoP [49]

²¹⁶ LJC Committee, 3 November 2025, RoP [52]

Supreme Court that both terms have the same meaning, and note the Welsh Government's confirmation that guidance accompanying the Bills, if enacted, will also state as such.

178. We further note that the purpose of this change – and the other changes to existing terminology introduced by the Planning Bill – is to make the law easier to understand, in both Welsh and English, and are content.

179. We note the Planning Bill's incorporation of common law that affects the operation of existing planning legislation. We consider that the inclusion of such law should improve accessibility by clarifying – through provision on the face of the legislation – what is already understood to be the meaning of the law which is being restated.

180. We also note the other changes brought forward by the Planning Bill for the purpose of clarifying the application or effect of existing law, and the explanations provided to us for these changes, and are content. We however acknowledge that the Welsh Government will correct an erroneous Standing Order reference in the Drafters' Notes for the Bill in respect of one of these changes.

181. In addition, we note the omission of obsolete provisions as part of the consolidation exercise, and the reasons for their omission, and also the explanations provided to us for why changes have been made to existing law for the purpose of achieving a satisfactory consolidation. We are content with the omissions and the changes in question.

182. The Law Commission told us that it was content that the recommendations it made in its letter of 16 May 2024 have been appropriately replicated in the Bills, and for that reason we are also content.

183. Finally, we note the Planning Bill's incorporation of a number of provisions which currently sit in subordinate legislation and, conversely, that a smaller number of provisions have been moved from primary legislation and will instead be included in subordinate legislation. We are content with the changes made by the Bill in this respect. Further, we welcome the fact that the changes made by the Bill to the scrutiny procedures that will apply to certain subordinate legislation powers will mean that those regulations will be subject to a higher degree of scrutiny than would otherwise be the case under the enactments that are being consolidated.

Conclusion 3. We consider that the Bills correctly consolidate the relevant enactments or change their substantive legal effect only to the extent allowed by Standing Order 26C.2.

5. Do the Bills consolidate the law clearly and consistently?

In accordance with Standing Order 26C.17(iv) our consideration of the Bills has included assessing whether they clearly and consistently consolidate existing legislation.

General

184. Many of those who responded to our consultation raised questions about the consolidation of existing law within particular sections of the Planning Bill.²¹⁷ After we brought the consultation responses to the attention of the Counsel General²¹⁸, the Office of the Legislative Counsel addressed each of these queries in writing.²¹⁹

185. Other matters which we pursued further as part of our assessment of whether the Bills clearly and consistently consolidate existing legislation are set out below.

Section 1 – Introduction

186. Section 1(1) of the Planning Bill states that the Bill, if and when enacted, will form part of a code of Welsh law relating to planning. Subsection (2) provides a non-exhaustive list of the enactments contained in, or made under, the various Acts which it consolidates.

187. As stated at paragraph 16, the Welsh Government’s intention in respect of the Consequential Provisions Bill is that it will host consequential and transitional provisions that “either have a limited lifespan in practice or will be of very limited interest to most readers of planning law”, leaving only the substantive provisions in the Planning Bill.

188. We therefore asked the Counsel General to explain what consideration had been given to including a list of consolidated enactments in the Consequential

²¹⁷ See, for example: [PCB02 Historic Houses Wales](#), paragraph 1; [PCB05 CLA Cymru](#), paragraphs 20 and 21; and [PCB06 RTPI Cymru](#), pages 3 to 5.

²¹⁸ Letter to the Counsel General, 21 October 2025

²¹⁹ Letter from the Counsel General, 28 October 2025, Annex

Provisions Bill instead of within section 1 of the Planning Bill, in the interests of a ‘clean slate’ consolidation. In response, she stated:

“... the idea is that the first Bill, the consolidation Bill, will start off by saying, ‘This is a consolidation Bill’, so you know that you don’t have to go further back in time. And then it will put the things that you need to know, and you’ll not have to refer to anywhere else, on its face, and then be self-contained, whereas if you put the signposting about what’s changed in the other Bill, you’d have to cross-reference it.”²²⁰

189. Dr James George, Senior Legislative Counsel in the Office of the Legislative Counsel, added:

“The first two sections of the main Bill are introductory provisions that explain what the Bill’s doing and what it contains. And we thought it was helpful for section 1 to indicate, ‘This is a consolidation Bill and here’s broadly what it’s consolidating.”²²¹

Section 7 – The planning authority for an area

190. Many powers and duties under the Planning Bill are assigned to the planning authority. Section 7(1) of the Bill provides that the planning authority for an area in Wales is the county council or county borough council for the area and its subsection (2) provides that:

- a National Park authority for a National Park in Wales “is the planning authority for the area of the Park”;
- a joint planning board established under section 8 of the Bill “is the planning authority for its joint planning area”.

191. Charles Felgate, from Geldards LLP, commented that it would be “remiss to not give a hint” in section 7 that the planning authority “could well be the Welsh Ministers in certain circumstances”. He referred to examples of the Welsh Ministers’ powers and responsibilities contained within:

²²⁰ LJC Committee, 3 November 2025, RoP [157]

²²¹ LJC Committee, 3 November 2025, RoP [158]

- section 44, which enables the Welsh Ministers, by order, to grant planning permission for a specified development or a development of a specified description;
- section 72, which requires a planning authority to refer certain applications to the Welsh Ministers for decision; and
- section 73, which enables an applicant for certain applications to appeal to the Welsh Ministers if the planning authority refuses the application, or grants the application subject to conditions, so that the Welsh Ministers can determine on the application in accordance with section 76.²²²

192. The Counsel General's letter of 28 October 2025 includes commentary from the Office of the Legislative Counsel, in which it advised that actioning the suggestion provided by Charles Felgate would be incorrect:

*"... The references to a "planning authority" in the Bill restate existing references to local planning authorities, mineral planning authorities and hazardous substances authorities. They do not include the Welsh Ministers."*²²³

193. In oral evidence, the Counsel General explained why section 7 of the Bill does not reference the Welsh Ministers' powers:

*"... trying to find a term that doesn't then confuse everybody with the difference between the national planning authority, the national park, the local planning authority and so on is problematic. And also it doesn't tell you what the Welsh Ministers' powers are; you've still got to read the whole Bill to find that out. So, I think, in the end, the judgment was it just didn't clarify it. In fact, if anything, it might be slightly more confusing."*²²⁴

194. Dr James George added:

"We did think about whether there was any merit in mentioning the role of the Welsh Ministers at the beginning of the Bill, where we talk about which authorities are the planning

²²² PCB03 Charles Felgate, Geldards LLP, page 3

²²³ Letter from the Counsel General, 28 October 2025, Annex, paragraph 1

²²⁴ LJC Committee, 3 November 2025, RoP [160]

*authorities, but we didn't think there was anything that we could usefully say, really. We've clarified, in a couple of places in the Bill, the status of national planning policy made by the Welsh Ministers, and its relevance to local plans and to planning decisions, but we didn't think there was anything we needed to say about the functions of the Welsh Ministers themselves."*²²⁵

195. The provisions of section 7(2) include those originating from section 4A(2) of the 1990 Act, which provides that the National Park authority for a National Park established for any area "shall be the sole local planning authority for the area of the Park". Subsections (2)(a) and (b) of section 4A of the 1990 Act further provide:

- functions conferred by or under the planning Acts²²⁶ on a planning authority shall, "in relation to the Park, be functions of the National Park authority, and not of any other authority"; and
- "so much of the area of any other authority as is included in the Park shall be treated as excluded from any area for which that other authority is a planning authority of any description".

196. Bannau Brycheiniog National Park Authority told us that the proposed consolidation of these provisions in the Bill "introduces huge uncertainty to the role of national park authorities" by changing their role "as the sole local planning authority for the area of the Park". It states that, having raised this matter with the Welsh Government:

*"... officials have argued that the function conferred in ... [section] 60M(1) [of the] Planning and Compulsory Purchase Act 2004 on a Corporate Joint Committee (CJC) to prepare a Strategic Development Plan is considered neither a function conferred by or under the planning Acts nor a function of a planning authority of any description (with reference to ... s4A (2)(a) [of the 1990 Act]]."*²²⁷

²²⁵ LJC Committee, 3 November 2025, RoP [161]

²²⁶ For the purposes of the 1990 Act, "the planning Acts" means that Act, the *Planning (Listed Buildings and Conservation Areas) Act 1990* (c.9), Parts 3 to 5 of the 2023 Act (and Part 7 of that Act as it applies for the purposes of those Parts), the *Planning (Hazardous Substances) Act 1990* (c. 10) and the *Planning (Consequential Provisions) Act 1990* (c. 11).

²²⁷ PCB07 Bannau Brycheiniog National Park Authority, page 3

197. We invited other national park authorities to comment on the concerns raised by Bannau Brycheiniog National Park Authority.²²⁸ In response to the concerns raised in respect of section 7 of the Planning Bill, the Pembrokeshire Coast National Park Authority said:

“Section 7 ‘The planning authority of an area’ identifies the National Park Authority as the Planning Authority for the area of the Park, except where a joint planning board is established under section 8 ‘Power to designate joint planning area and establish joint planning board’. Under section 9 ‘Joint planning areas and National Parks’ a Joint Planning Board should not be set up to include a national park but that can be overridden by regulations.

There appears to be a subtly different approach in the Bill to the current section 2(1B) of the Town and Country Planning Act [1990] which contains an absolute prevention of a Joint Planning Board being established for a National Park in section 2(1D). The Pembrokeshire Coast National Park Authority would suggest that the wording in 2(1D) is retained to ensure this does not introduce a change through the Planning (Wales) Bill 2025.”²²⁹

198. In the Counsel General’s letter of 28 October 2025, the Office of the Legislative Counsel responded to the matter raised by Bannau Brycheiniog National Park Authority:

“The response claims that the Planning Bill changes the effect of section 4A of the Town and Country Planning Act 1990 and creates uncertainty about the role of a National Park authority as a planning authority. We do not agree that it does either of those things.

Section 7 of the Bill states clearly that a National Park authority is the planning authority for its National Park. The drafting follows the approach to defining a local planning authority that is already taken in section 78(3) of the Planning and

²²⁸ Letter to the Chair of Eryri National Park Authority and the Chair of the Pembrokeshire Coast National Park Authority, 21 October 2025

²²⁹ Letter from the Chair of the Pembrokeshire Coast National Park Authority, 10 November 2025

Compulsory Purchase Act 2004, rather than the approach in section 4A of the 1990 Act.

The Bill omits most of section 4A of the 1990 Act because it is unnecessary in Wales. In most of England, there are two local planning authorities (the county and district planning authorities) and a mineral planning authority (which is the county planning authority). We think that section 4A provides that a National Park authority is the 'sole local planning authority' for its Park and has the functions of 'a planning authority of any description' to make clear that it takes the place of all of those other authorities. Under the Planning Bill, an area in Wales can only have one planning authority (normally the county or county borough council), so the approach taken in section 4A is unnecessary. There is no need to say any more than is said in section 7 of the Bill.

We do not understand why the response refers to a corporate joint committee's function of preparing a strategic development plan under Part 6 of the 2004 Act. Section 4A of the 1990 Act is about the functions of planning authorities under the planning Acts. A CJC is not a 'planning authority' because it is not referred to as a planning authority anywhere in the existing legislation; and it is not a joint committee of the planning authorities in its area but a separate corporate entity. The 2004 Act is not one of the 'planning Acts' because it is not included in the definition of 'the planning Acts' in section 336(1) of the 1990 Act. Section 4A of the 1990 Act therefore has no application to CJs or to functions under the 2004 Act. Instead, Part 6 of the 2004 Act sets out which authorities exercise functions under that Part, and in particular confers the function of a preparing a SDP only on a CJC. Part 2 of the Planning Bill maintains that position."²³⁰

199. In oral evidence, the Counsel General also addressed this matter:

"... we don't think it has changed the effect of section 4A of the Town and Country Planning Act 1990. We're very confident it restates the law in its existing form. I think it's very clear, and the

²³⁰ Letter from the Counsel General, 28 October 2025, Annex, paragraphs 25 to 28

committee will be very clear, about the fact that we know that the national park authorities are important local planning authorities in their own right. They are, in fact, single-purpose planning authorities; that's what they are. I think it's very clear that that's the case, and section 7 presents that provision in a much clearer and more straightforward manner.

I do think there's a little bit of confusion around the role of the CJC, which I was also the Minister in charge of at the time, just to say. So, just to be really clear: the existing legislation makes it abundantly obvious that a corporate joint committee is not a planning authority for the purposes of planning legislation. They're a separate corporate entity with the responsibility of preparing the strategic development plan for their region, not as the local development planning authority. So, it's great that the national parks are taking an interest in this and so on, but I think it is really important to understand that that is not changing. They've expressed views—policy views, I would say, not planning law views—over the years since we put the CJC in place, which has now been some five years, around how that interacts. But I do think that's a separate matter from the restating of their position as a local planning authority.”²³¹

Section 11 – Sustainable development; and section 51 – Sustainable development duty

200. Sections 11 and 51 of the Planning Bill restate section 2 of the 2015 Act, which provides that planning authorities (including the Welsh Ministers) must exercise their functions in relation to development plans and planning permissions for the purpose of ensuring that the development and use of land contribute to improving the economic, social, environmental and cultural well-being of Wales.

201. RTPI Cymru told us that, rather than including this provision in sections 11 and 51 only, “it would be better at the top of the legislation, overarching all of the functions in the entire Bill, to set out that statutory purpose of the planning system”.²³²

²³¹ LJC Committee, 3 November 2025, RoP [166] and [167]

²³² LJC Committee, 6 October 2025, RoP [110]

202. Planning Officers Society Wales echoed RTPI Cymru's comments about the provision contained within sections 11 and 51:

*"... it might come better if it was positioned at the top of the Bill, so that it was clear that it applied to all elements of the Bill. ... there's no reference, for example, in the section on planning enforcement, so we just wonder about the positioning of that statement."*²³³

203. In correspondence, the Counsel General addressed the points raised by RTPI Cymru and Planning Officers Society Wales:

*"Sections 11 and 51 of the Bill reproduce the existing scope of the duty in section 2 of the Planning (Wales) Act 2015, which was debated and agreed by the Senedd during scrutiny of the 2015 Act. Extending the duty to other functions would be a change in the law. There are also planning functions to which the duty is clearly irrelevant (such as powers to make regulations about procedural matters and functions relating to certificates of lawfulness and blight notices), so applying it generally to all functions under the Bill could give a misleading impression about its actual scope."*²³⁴

204. In oral evidence, we asked the Counsel General whether she believed there would be a benefit in extending the duty within future legislation to reform the law. In response, she stated:

*"... if you were going to extend a sustainable development duty then you would need to carefully evidence how and where to extend it, and it wouldn't necessarily extend to all planning. So, a certificate of lawful use, for example, how would you extend it to that? ... there are a number of things that you might want to have a look at to see whether they would or wouldn't benefit from having it extended, but, for the purposes of this, that is a change in the law, and obviously this isn't about changing the law."*²³⁵

²³³ LJC Committee, 13 October 2025, RoP [31]

²³⁴ Letter from the Counsel General, 28 October 2025, point 2

²³⁵ LJC Committee, 3 November 2025, RoP [185]

Section 19 – Duty to prepare local development plan

205. Section 19 of the Planning Bill requires a planning authority to prepare and adopt a local development plan (LDP) for its area. Subsection (5) of section 19 requires the plan to specify the period for which it is to have effect, and its subsection (9) provides that a plan ceases to be a local development plan at the end of this period.

206. Subsections (5) and (9) are restated, respectively, from subsections (3B) and (9) of section 62 of the 2004 Act, which were inserted into that Act by section 12 of the 2015 Act. The provisions in section 12 of the 2015 Act came into force on 4 January 2016.²³⁶

207. In September 2020, the Welsh Government wrote to local authorities to clarify the application of section 62 of the 2004 Act, as amended by the 2015 Act:

“With many LDPs nearing the end of their plan period, particularly from 2021 onwards, the perception has been that LDPs will no longer be extant once they have reached the end of their plan period. I would like to take this opportunity to clarify the position.

The provisions in the PWA 2015 regarding the period to which a plan has effect were commenced on 4 January 2016. These provisions do not have retrospective effect. This means that the provisions do not apply to LDPs adopted prior to this date. Plans adopted prior to 4 January 2016 will remain the LDP for determining planning applications until replaced by a further LDP. For those LDPs adopted after 4 January 2016, the plan will cease to be the LDP on expiry of the period specified in the plan.

The first LDP to expire under the end date provisions will be on 1 January 2026. This period of just over 5 years to 2026 does provide an opportunity to explore the position further and consider whether further legislation is needed.

For the two remaining LPAs which do not yet benefit from an adopted LDP, but have an adopted Unitary Development Plan (UDP), the period to which a plan has effect provisions do not

²³⁶ By virtue of article 3 of the Planning (Wales) Act 2015 (Commencement No. 2 and Transitional and Saving Provisions) Order 2015 (No. 1987).

apply. The two UDPs remain extant until replaced by their respective LDP.”²³⁷

208. Bannau Brycheiniog National Park Authority told us that there “remains a lack of clarity” about the retrospective application of the provision in section 19 of the Planning Bill, and cited the 2020 correspondence to local authorities.²³⁸

209. We invited other national park authorities to comment on the concerns raised by Bannau Brycheiniog National Park Authority.²³⁹ In response to concerns raised in respect of section 19 of the Planning Bill, the Pembrokeshire Coast National Park Authority said that it agreed that its subsection (9) should specify that its provision only applies to local development plans adopted after the commencement date of the 2015 Act, and not retrospectively to plans adopted prior to this date.²⁴⁰

210. In the Counsel General’s letter of 28 October 2025, the Office of the Legislative Counsel addressed this apparent lack of clarity:

“The response claims that there is currently uncertainty about when local development plans expire, which the Planning Bill continues. It might also be suggesting that the Bill could cause plans to expire earlier than would otherwise have been the case. We do not agree that there is any uncertainty or that the Bill would change anything.

Section 12 of the Planning (Wales) Act 2015 amended section 62 of the Planning and Compulsory Purchase 2004 with effect from 4 January 2016. It inserted a new section 62(3B) requiring LDPs to specify the periods for which they would have effect. It did not apply retrospectively to LDPs that had already been adopted or require them to be amended. It also inserted section 62(9), which provides for LDPs to cease to have effect ‘on the expiry of the period specified under subsection (3B)’. It does not apply to any periods that had been specified in LDPs adopted before section 62(3B) came into force on 4 January

²³⁷ Welsh Government, Local Development Plan (LDP) end dates: letter to local authorities, 24 September 2020

²³⁸ PCB07 Bannau Brycheiniog National Park Authority, page 6

²³⁹ Letter to the Chair of Eryri National Park Authority and the Chair of the Pembrokeshire Coast National Park Authority, 21 October 2025

²⁴⁰ Letter from the Chair of the Pembrokeshire Coast National Park Authority, 10 November 2025

2016, because those periods were not specified 'under subsection (3B)'.

Section 19(5) and (9) of the Planning Bill restate section 62(3B) and (9) of the 2004 Act in almost identical terms. In particular, section 19(9) provides for a plan to cease to have effect at the end of 'the period specified under subsection (5)'. The reference to the period 'specified under subsection (5)' will include a period that was specified under section 62(3B) when it was in force, but it will not include any period that had been specified in a plan adopted before section 62(3B) came into force. Section 35(2) and (4) of the Legislation (Wales) Act 2019 will ensure that periods specified under section 62(3B) continue to have effect as if specified under section 19(5) of the Planning Bill, and more generally that existing LDPs continue to have the same effect after the Planning Bill comes into force as they had before, so the position will be unchanged. Paragraph 2 of Schedule 5 to the Planning (Consequential Provisions) (Wales) Bill makes clear that the transitional and saving provisions in that Schedule apply in addition to section 35 of the 2019 Act and do not limit the operation of that section."²⁴¹

211. The Counsel General told us in oral evidence that she believed the 2020 letter had “resolved the issue”, because the provisions were about the expiry of plans that were introduced by the 2015 Act, “and it applied to plans that already existed”.²⁴² Dr James George added:

“... it would have been possible for the Schedule of transitional and saving provisions in the consequential provisions Bill to say ... that sections 19(5) and (9) about the expiry of plans don't apply to local development plans that were adopted before 4 January 2016, but we think that's clear anyway, so we don't think we need to say that.”²⁴³

²⁴¹ Letter from the Counsel General, 28 October 2025, Annex, paragraphs 30 to 32

²⁴² LJC Committee, 3 November 2025, RoP [171]

²⁴³ LJC Committee, 3 November 2025, RoP [173]

Section 86 – Combination of applications for planning permission with other applications

212. Section 86 of the Planning Bill provides that the Welsh Ministers may make regulations to enable applications for planning permission to be combined with “any other application that an enactment specified in the regulations requires to be made to a planning authority or other local authority in respect of the same development”. This provision originates from section 332(1) of the 1990 Act, which provides that:

“Regulations made under this Act may provide for the combination in a single document, made in such form and transmitted to such authority as may be prescribed, of—

- (a) an application for planning permission, or permission in principle, in respect of any development; and*
- (b) an application required, under any enactment specified in the regulations, to be made to a local authority in respect of that development.”*

213. Planning Officers Society Cymru questioned whether section 86 of the Bill “possibly appears to go slightly beyond consolidation in allowing the combination of applications for planning permission with other applications”.²⁴⁴ RTPI Cymru made similar representations.²⁴⁵

214. In the Counsel General’s letter of 28 October 2025, the Office of the Legislative Counsel confirmed that section 86 “is not a new provision”, and that it restates section 332 of the 1990 Act, “with minor drafting changes”.²⁴⁶

Our view

215. We note the evidence received from the Counsel General, her officials, and from stakeholders in respect of the question of whether the Bills consolidate the law clearly and consistently.

216. We acknowledge the suggestions and, in respect of some matters, concerns raised by stakeholders in respect of the clarity of the legislation.

²⁴⁴ LJC Committee, 13 October 2025, RoP [21]

²⁴⁵ PCB06 RTPI Cymru, page 4

²⁴⁶ Letter from the Counsel General, 28 October 2025, Annex, paragraph 17

217. While there may be differing views expressed to us about the clarity of certain provisions in the Bills, we have carefully considered the explanations provided by the Counsel General and her officials for the Welsh Government's approach in respect of the provisions in question, and are broadly content.

Conclusion 4. We consider that the Bills consolidate the law clearly and consistently.

218. However, we believe that as two planning authorities have raised questions in respect of provision in the Planning Bill on the role of national park authorities, there is an increased imperative for the Welsh Government to provide further clarity on this issue.

219. In particular, we note that the Pembrokeshire Coast National Park Authority told us that there "appears to be a subtly different approach" in the Planning Bill's restatement of section 2(1B) of the 1990 Act within section 9 of the Bill, which allows regulations to designate an area that includes all or part of a national park as a joint planning area.

Recommendation 3. The Counsel General should confirm that section 9 of the Planning (Wales) Bill does not include any changes to existing law, and clarify her reason for that view.

220. We also believe that the Welsh Government should consider whether section 19 of the Planning Bill on local development plans may benefit from additional clarity. We consider this to be necessary as two planning authorities have told us that section 19(9) should specify that its provision only applies to local development plans adopted after the commencement date of the 2015 Act, and not retrospectively to plans adopted prior to this date. As this matter is relevant to all planning authorities, we consider that there is a need for the Welsh Government to inform them of the outcome of its consideration.

Recommendation 4. In response to concerns raised by stakeholders, the Counsel General should give further consideration to whether section 19(9) of the Planning (Wales) Bill may benefit from additional clarity, and should write to all planning authorities to report on her consideration.

221. Based on our consideration of: the scope of the Bills and the changes they make (as discussed in the previous two chapters), and also our consideration of whether the Bills consolidate the law clearly and consistently, we consider that the Bills should proceed as Consolidation Bills.

Recommendation 5. The Planning (Wales) Bill and the Planning (Consequential Provisions) (Wales) Bill should proceed as Consolidation Bills.

6. Implementation and evaluating success

As part of our consideration of the Bills we have looked at the Welsh Government's plans for implementation (if the Bills are enacted) and have also considered how the Welsh Government may best evaluate the success of this consolidation exercise.

Implementation

222. The Explanatory Memorandum refers to an 18-month implementation period over 2026 to 2027 for the Planning Bill, should it be passed by the Senedd and enacted.²⁴⁷ The Counsel General's letter of 10 October 2025 confirmed that the commencement of the Bills is expected to take place within 18 months from Royal Assent.²⁴⁸

223. The Explanatory Memorandum also states that, in addition to the preparation of subordinate legislation (as considered in the next sub-section), the following areas of work will form part of the Bills' implementation:

- creating new Welsh Government guidance to support stakeholders in understanding the Planning Bill and how it affects them;
- running familiarisation webinars for planning authorities;
- cancelling a Technical Advice Note on Simplified Planning Zones and a demolition direction;
- updating certain Welsh Government webpages, including published application forms, and various policy and guidance documents;
- updating planning authorities' webpages, including application forms and templates; and

²⁴⁷ Explanatory Memorandum, paragraph 60

²⁴⁸ Letter from the Counsel General, 10 October 2025, paragraph 28

- updating planning authorities' systems for processing planning applications.²⁴⁹

224. RTPI Cymru provided the following perspective in respect of the implementation of the Bills, if enacted:

*"... we've spent decades as practitioners understanding things like section 106 agreements, section 78 variations. All of those numbers, all of those legal clauses, will change, but we'll get used to it, and there's a table of destinations provided in the Bill, which is extremely helpful. So, we'd ask that that remains and that it gets updated as the codification process rolls on over the years, as needed."*²⁵⁰

225. Planning Officers Society Wales similarly stated that the standard of the explanatory materials prepared alongside the Bills is "very high", citing the table of destinations as "particularly helpful" for practitioners.²⁵¹ They also noted:

*"Welsh Government have been very good in the past at producing template documents for LPAs [local planning authorities], so template decision notices, template advertisements. Those sorts of documents could be very helpful for LPAs and would stop 25 authorities having to scratch their heads and start from the beginning. So, we would welcome further tools along those lines, if it was possible."*²⁵²

226. In the same vein, RTPI Cymru also highlighted the need for "ongoing communication to support practitioners with shared learning".²⁵³ They further stated:

*"... what's really important to us is, perhaps, ongoing support as the Bill is enacted and comes into place. So, alongside the explanatory materials, any other resources to support practitioners, any training guides or courses, both as the Bill progresses to its last stages, and then in actually implementing the Act would be really helpful to practitioners."*²⁵⁴

²⁴⁹ Explanatory Memorandum, paragraphs 66, 68, and 70 to 72

²⁵⁰ LJC Committee, 6 October 2025, RoP [103]

²⁵¹ LJC Committee, 13 October 2025, RoP [38]

²⁵² LJC Committee, 13 October 2025, RoP [38]

²⁵³ LJC Committee, 6 October 2025, RoP [109]

²⁵⁴ LJC Committee, 6 October 2025, RoP [138]

227. Planning Officers Society Wales welcomed the Welsh Government's plans to provide guidance and webinars, and to undertake other associated activity to support the Planning Bill's implementation, but stressed the need for seminars to be provided to private practitioners as well as planning authorities.²⁵⁵

228. The Counsel General told us that the Welsh Government "will support stakeholders with a whole range of things, including guidance notes, drafting and webinars".²⁵⁶ She also stated that the Welsh Government had a timetable for this work, although:

*"... my own view ... would be very much that you have to make sure that you've got the stuff available for when people start to realise they need it, and that won't be immediately; it will be when it's in force and people start coming through the doors of various planning offices or legal offices and ask questions. And at that point, people think, 'Oh, I wonder if there's a webinar that I can have a look at on this,' or some continual professional development-type structure, and we'll be assisting with that."*²⁵⁷

229. Dion Thomas, Head of Legislation and Performance at the Welsh Government's Planning Directorate, stated that the Welsh Government would "make it as easy as possible" for stakeholders to implement the legislation. He added:

*"So, if it's for planning authorities, we've heard some evidence around templates and they've got notices, et cetera. Well, we can provide a table to identify what are those notices and what changes need to happen. We can't physically change it for them, because we don't have access to their back-office systems. But we can give them the information, so that they can do it relatively quickly and easily."*²⁵⁸

230. Dion Thomas also said that the Welsh Government would assess the demand for webinars, and explained:

"We are factoring in to hold them. But also, anyway, as part of our business as usual ... We're invited to various events to talk about what's going on in the planning directorate more

²⁵⁵ LJC Committee, 13 October 2025, RoP [46]

²⁵⁶ LJC Committee, 3 November 2025, RoP [244]

²⁵⁷ LJC Committee, 3 November 2025, RoP [248]

²⁵⁸ LJC Committee, 3 November 2025, RoP [228]

*generally, and we've been using that network to be able to get up to the point that we have now, really, and we'll continue to do that, moving forward, as well as holding more formal events in that respect."*²⁵⁹

231. Charles Felgate from Geldards LLP highlighted to us the need for reference materials to be produced in respect of planning law in Wales:

*"There are many excellent text books on planning law but very few (if any) are focussed on Wales. There is a section on Wales in the excellent Encyclopaedia of Planning Law and Practice published by Sweet and Maxwell, which is an updated service which was prominent on any sensible practitioners bookshelves (when we had such things). The Welsh Ministers need to ensure that the Bill (if enacted) receives some sensible academic discussion as to how it differs from English law and that this is reflected in appropriate reference material. I am not sure how that is best achieved but Wales is a small country and it will not necessarily be financially viable to depend on private organisations to achieve this. It is however a necessary to achieve the aim of accessibility of the law."*²⁶⁰

232. Planning Aid Wales similarly stated:

*"We would stress the importance of ensuring that the eventual legislation is not only drafted with clarity and consistency but also supported by accessible resources to raise awareness and understanding amongst the public. In our view, there is significant value in producing plain-language, easy-to-read guidance to accompany the Bills once enacted. Such materials would help communities and individuals recognise the relevance of the legislation to their rights and responsibilities within the planning system, and in turn, strengthen public trust and participation."*²⁶¹

233. In addition, RTPI Cymru stated:

"Going forward, there appears to be a place for a 'Guide' to Welsh Planning Law which explains planning law as it applies

²⁵⁹ LJC Committee, 3 November 2025, RoP [249]

²⁶⁰ PCB03 Charles Felgate, Geldards LLP, page 4

²⁶¹ PCB04 Planning Aid Wales

in Wales and to what extent legal principles established through judgments of the Courts are applicable in Wales. Following enactment of a Welsh Code the current legal reference books, which are structured primarily around the law as it applies in England, will become less helpful to practitioners working in Wales.”²⁶²

234. Similarly, UKELA suggested that the Welsh Government should:

“... publish a concordance or plain-comment, public-friendly guide alongside the Bill as enacted and consider engagement or training to support users during the transition from any current provisions and the new legislation.”²⁶³

235. The Counsel General told us that the Welsh Government would “absolutely” welcome the provision of new and revised textbooks on planning law in Wales, and elaborated:

“One of the things, as any practitioner in law in Wales will tell you, that is very annoying is to look something up in some encyclopaedia, find an asterisk, look up the asterisk at the bottom of the page and find, ‘Not in force in Wales’, without it telling you what is in force in Wales. It drives me mad. So, yes, it’s encouraging people to put the textbooks in place, to make sure this happens.

We’re aware that the University of Wales Press published Welsh Planning Law and Practice in 2017. We hope very much they’ll commission one based on the new law and that they’re all aware of this legislation. We’ll try and make sure that we do.”²⁶⁴

236. She also stated that the Welsh Government “will probably have to intervene in some way” to ensure provision is made, because:

“One of the problems we have in Wales is that it’s not commercially viable sometimes to do these things. Well, certainly this Government, and I imagine any future Government, is going to want to take the view that they are

²⁶² PCB06 RTPI Cymru, page 5

²⁶³ PCB09 UKELA, paragraph 11

²⁶⁴ LJC Committee, 3 November 2025, RoP [252]

happy to assist with that, and we publish our own planning policy documents, and so on, for that reason.”²⁶⁵

Subordinate legislation

237. The Explanatory Memorandum notes that, alongside the current legislation that underpins planning law in Wales, “there is a comprehensive series of subordinate legislation, and policy and guidance documents including Planning Policy Wales, Technical Advice Notes, Circulars and Clarification Letters”.²⁶⁶

238. The Planning Bill incorporates some provisions of subordinate legislation made under the Acts being consolidated in order to produce a more satisfactory consolidation (see paragraphs 170 to 175 for further details).

239. In addition, new subordinate legislation will be necessary to bring the primary legislation into effect, as stated in the Explanatory Memorandum:

“The implementation of the Planning Bill contains areas of work required to ensure the law, and therefore the planning system, can continue to operate effectively on the day the Act is commenced. The majority of this is to be undertaken by the Welsh Government and includes the preparation of subordinate legislation that is required to bring the new legislation fully into effect. This includes new regulations on trees and regulations making consequential amendments to existing subordinate legislation. Some may require consultation.”²⁶⁷

240. The Counsel General confirmed in correspondence that the anticipated work to prepare regulations making consequential amendments to existing subordinate legislation will include revoking provisions that have been consolidated into the (then) Planning (Wales) Act.²⁶⁸

241. Further to this subordinate legislation, the Welsh Government intends to consolidate key town and country planning subordinate legislation in order to supplement the Planning Bill (as previously announced by the Welsh Government

²⁶⁵ LJC Committee, 3 November 2025, RoP [252] and [253]

²⁶⁶ Explanatory Memorandum, paragraph 10

²⁶⁷ Explanatory Memorandum, paragraph 64

²⁶⁸ Letter from the Counsel General, 10 October 2025, paragraph 29

and referenced at paragraph 10). The Explanatory Memorandum sets out the anticipated approach:

“Given the volume of planning related subordinate legislation and guidance and having regard to the need to manage resources within the Planning Directorate, it is not possible to update and consolidate all of the subordinate legislation at once whilst also ensuring the Acts are commenced in a timely manner. The remaining suite of subordinate legislation will continue to be consolidated and updated after the commencement of the Planning Act ... This will be undertaken in a phased approach to coincide with any major policy reforms to individual instruments and will also be guided by those pieces of legislation most commonly used by practitioners.”²⁶⁹

242. The Counsel General provided further information about this programme of work in correspondence:

“The timescales for restating the remaining legislation will be guided by whether major reforms to a particular instrument are proposed and to what extent the enactment is used by practitioners. It is not currently proposed to bring forward longer but fewer regulations, but this will be kept under review as our analysis is concluded and a programme developed.”²⁷⁰

243. RTPI Cymru said:

“... where we do have a question mark at the moment ... is just where the secondary legislation and the regs that are in place now fit. Once this is enacted, we need everything to flow to keep working. So, to name three elements, things like the use classes Order from 1987, the general development procedure Order and the general permitted development Order are day-to-day stuff in the operation of planning, so we’d need to understand what happens to those, because they’re embedded in existing legislation that will then no longer apply in Wales. ... we just need—it’s one for the legal experts—reassurance that either

²⁶⁹ Explanatory Memorandum, paragraph 65

²⁷⁰ Letter from the Counsel General, 10 October 2025, paragraph 31

that's updated in time or the existing situation continues without a gap, to make sure that things can keep working."²⁷¹

244. In written evidence, RTPI Cymru noted that the information provided by the Welsh Government in the documents supporting the Bills do not specify which items of subordinate legislation are included in its programme of consolidation, or the timescales for that work.²⁷²

245. Annabel Graham Paul, representing the Planning and Environment Bar Association, supported the Welsh Government's plans for a programme of consolidating subordinate legislation²⁷³, but called for clarity as to whether current subordinate legislation, such as those referred to by RTPI Cymru, would continue to apply once the Planning Bill is enacted.²⁷⁴

246. Planning Officers Society Wales similarly called for such clarity to be provided²⁷⁵, and specifically queried whether "the pooling regulations under the community infrastructure levy"²⁷⁶ would continue to apply following the enactment of the Planning Bill.²⁷⁷

247. In correspondence, the Counsel General sought to "provide some reassurance" in respect of these matters:

"... the coming into force of the Planning (Wales) Bill will not change the effect of any of the existing subordinate legislation (except in those cases where provisions currently in subordinate legislation are being restated in the Bill – which are all identified in the tables of origins and destinations and the Drafters' Notes). This is another point that can be addressed in guidance if the Bill is enacted.

Section 35 of the Legislation (Wales) Act 2019 specifically deals with the situation where existing legislation is repealed and re-enacted in an Act of the Senedd. Section 35(3) provides that, if subordinate legislation that was made under the repealed legislation could also be made under the new Act, it continues to have effect as if it had been made under the new Act.

²⁷¹ LJC Committee, 6 October 2025, RoP [144]

²⁷² PCB06 RTPI Cymru, page 2

²⁷³ LJC Committee, 6 October 2025, RoP [194]

²⁷⁴ LJC Committee, 6 October 2025, RoP [195]

²⁷⁵ LJC Committee, 13 October 2025, RoP [50]

²⁷⁶ ~~Community Infrastructure Levy Regulations 2010 (No. 948), regulation 123(3)~~

²⁷⁷ LJC Committee, 13 October 2025, RoP [18]

Similar provisions have applied to earlier consolidations. For example, the Town and Country Planning (Use Classes) Order 1987 was made under the Town and Country Planning Act 1971 but now has effect as if it had been made under the Town and Country Planning Act 1990. If the Planning (Wales) Bill is enacted, when the Bill comes into force that order will continue to have effect in relation to England as if made under the 1990 Act, and in relation to Wales as if made under the Bill.

Section 35(2) of the 2019 Act also ensures that any references in subordinate legislation to provisions that are consolidated in the Planning (Wales) Bill will in future be read as referring to the corresponding provisions of the Bill. Although section 35(2) ensures that subordinate legislation continues to work correctly, it does not help the accessibility of the law in this context. I would therefore expect regulations to be made under section 4 of the Planning (Consequential Provisions) (Wales) Bill textually amending references in subordinate legislation so that they refer to the correct provisions of the Bill.”²⁷⁸

248. In oral evidence, the Counsel General confirmed this position²⁷⁹, and provided further information in respect of the subordinate legislation necessary to implement the Planning Bill:

“... there will be a need to have a new instrument to make consequential amendments to existing subordinate legislation, so that they refer to the correct part of the consolidation Act and not to the Town and Country Planning Act or to whatever else it is that they refer to.

That’s quite a substantial Welsh statutory instrument to do, and it will need to be completed early in the new Senedd term in order to give a coherent set of laws to make sure that the consolidation project, if you want, continues on, so that it’s simplified all the way through ... So, I would expect the incoming Welsh Government to enact the new statutory instrument as one of its first priorities, and indeed this Government will make sure we’ve done a lot of the preparatory

²⁷⁸ Letter from the Counsel General, 28 October 2025, point 3

²⁷⁹ LJC Committee, 3 November 2025, RoP [201]

work necessary to make sure that that can be done early doors.”²⁸⁰

249. Dion Thomas provided additional information about the anticipated subordinate legislation associated with implementing the Bill:

“... we do have plans that we have to bring forward new tree regulations, because we are bringing forward the existing provisions around trees, but with amendments from the Planning Act 2008 that haven’t been commenced in Wales, and they require new legislation. We have consulted upon those already, and that is something that will be coming forward as well as part of the commencement of the Bill. ... there’s a large package of subordinate legislation that fits under the primary legislation, so we’re hoping to be able to do a small number of those as part of the implementation of the Bill, but we’ve also got to bear in mind that we want to try and commence the Bill as quickly as possible at the same time. And that wider consolidation of subordinate legislation will be a programme, then, that will follow after the Bill comes into effect, basically.”²⁸¹

250. Planning Officers Society Wales supported the Welsh Government’s intention to make further subordinate legislation under the Planning Bill in a phased approach, describing it as “appropriate and practical”. They elaborated:

“... if we were to wait for a time when it can all be put together then we would be waiting quite a significant period of time, and ... some of the subordinate legislation will be more tricky to do than this [Planning Bill] ...”²⁸²

251. However, they also called for a “clear road map” of the subordinate legislation to be made under the Planning Bill, and for “stakeholder engagement to inform which bits come first or which are prioritised”.²⁸³

²⁸⁰ LJC Committee, 3 November 2025, RoP [201] and [202]

²⁸¹ LJC Committee, 3 November 2025, RoP [205]

²⁸² LJC Committee, 13 October 2025, RoP [53]

²⁸³ LJC Committee, 13 October 2025, RoP [53]

252. In respect of the Welsh Government's anticipated phased approach to making further subordinate legislation under the Planning Bill, the Counsel General said:

*"... one of the conundrums that all Governments have is how much resource to put to tidying up the law and making it more accessible and how much resource to put to policy and reform Bills. And we're always trying to balance off ... there are pages and pages of SIs that are needed to tidy stuff up, but they require a resource from parliamentary draftspeople and others that would otherwise be able to be used on developing policy and reform Bills. So, the incoming Government, whoever they might be, will face that conundrum. This outgoing Government will have lined up as much as possible. ... But, in the end, the new Government is going to have to make decisions about how much of its resource to devote to continuing this piece of work, which I very much hope they will, and how much resource will have to be diverted on to new reforms and other projects."*²⁸⁴

253. She added:

"So, what you want to do is make sure as a Government ... [is that] the law is both practical and accessible, but also enforceable during the process. So, all of that's about what's currently in force, what we need to change, when is that enacted, when does the thing come into force in the first place, and all of that has to be carefully calibrated. So, at what point in time does the consolidation then Act, hopefully, come into force is a matter for judgment around how accessible is the law, how enforceable is it, how usable in the courts is it, how usable is it for local planning authorities. ...

Stakeholders will know the law already, they can see what's coming up, they have to get used to a little bit of terminology change, perhaps, and a bit more modern language, but otherwise we are simply restating the law as it is. And then it's a judgment call for how much of the SIs need to be in place to make it a coherent piece.

²⁸⁴ LJC Committee, 3 November 2025, RoP [206]

Members of the committee will be familiar with the use classes order; it's one of the things most of my constituents know about. That might be one of the things we want to have a look at first, because that's one of the most common things people use ... But we'd expect, you know, within sort of a year, 18 months, to have most of it up and running, assuming the new Government incoming has a similar attitude to wanting the law to be accessible.”²⁸⁵

254. Dion Thomas confirmed to us in oral evidence that, subject to the intentions of a new Government, the use classes order and the development management procedure order would “be done as part of the implementation of the Bill and everything else will follow after that”.²⁸⁶ He also stated that the Welsh Government had begun to prepare guidance to support the Bills, if and when they are passed by the Senedd, but that it “will accelerate that work” until commencement.²⁸⁷

A planning code

255. Section 1(1) of the Planning Bill states that the Bill, once enacted, will form part of a code of Welsh law relating to planning. The Explanatory Notes to the Bill explains the relevance of this statement:

“This statement has been included to improve the accessibility of the law in Wales and is an approach that will be adopted in future consolidation Acts and in any reform Acts that contain a comprehensive statement of the primary legislation on a topic.

This declaration of status is intended to help persons interested in the law on a particular topic – town and country planning in this instance – find and classify it more easily. The reference to the Bill’s status has been included with a view to subordinate legislation made under the Bill making identical provision. The Welsh Government’s intention is that primary, secondary and tertiary legislation (mostly guidance) will in future be categorised and published as coherent codes of law.

Classifying Bills in this way is consistent with the recommendation made by the Law Commission in its report Form and Accessibility of the Law Applicable in Wales (Law

²⁸⁵ LJC Committee, 3 November 2025, RoP [211] to [213]

²⁸⁶ LJC Committee, 3 November 2025, RoP [214]

²⁸⁷ LJC Committee, 3 November 2025, RoP [241]

Com No 366, 2016). That report acknowledged the importance for the accessibility of the law in maintaining the integrity of the law. Giving an Act the status of a code is intended to encourage a move away from a situation where the law on a particular topic is spread across a number of separate pieces of primary legislation. Rather, the intention is that future Senedd Bills are enacted and maintained in a way that allows users of legislation to find as much of the law affecting a particular topic as possible by reading a single Senedd Act or subordinate legislation made under it.”²⁸⁸

256. The Explanatory Memorandum provides additional information about the statement contained in section 1(1):

“... The significance of this status is twofold. The first is that the Welsh Government intends to publish all enactments that form part of the Code together. The second is that the Government also envisages, subject of course to the Senedd’s agreement, a change to the Senedd’s Standing Orders to seek to ensure that future changes to the law that forms part of a Code are made by amending or replacing the enactments rather than making different, ‘stand-alone’, provisions that would again lead to a complex proliferation of laws.”²⁸⁹

257. The Welsh Government set out the change it envisages to be made to the Senedd’s Standing Orders during the passage of the Bill which became the 2023 Act.²⁹⁰ It stated at the time that it would raise the matter with the Business Committee, pending the outcome of that Bill’s passage.²⁹¹ In July 2025, the Business Committee laid a report on its prioritisation of procedural matters for review, within which it identified the matter as one to be “highlighted for consideration during the Seventh Senedd.”²⁹² The Business Committee’s reason for taking this approach was that, at the time of its report, “no codes of Welsh law

²⁸⁸ Explanatory Notes to the Planning Bill, paragraphs 9 to 11

²⁸⁹ Explanatory Memorandum, paragraph 35

²⁹⁰ See: LJC Committee, 11 July 2022, RoP [97] and [98]; and Letter from the Counsel General, 17 August 2022, paragraphs 21 and 22

²⁹¹ Letter from the Counsel General, 17 August 2022, paragraphs 21 and 22

²⁹² Business Committee, Sixth Senedd procedural work: Priorities, July 2025, section 5, paragraphs 34 and 35

have been established”, and therefore it was “too soon to consider whether any specific procedural reforms are required.”²⁹³

258. The Explanatory Memorandum confirms that the separate code of historic environment law that exists as a result of the 2023 Act will not be substantively affected by the current consolidation exercise²⁹⁴, and that the Welsh Government agrees with the Law Commission that the law relating to the countryside, rights of way, the environment and wildlife should not be included within a planning code²⁹⁵.

259. In addition, the Explanatory Memorandum notes that, while the Planning Bill does not include legislation on hazardous substances, “it remains an option to create a further Act within the Planning Code at a future point, dealing with the special controls of hazardous substances”.²⁹⁶ It also states that a planning code:

“... would ultimately include legislation relating to the design and construction of buildings, currently found primarily in the Building Act 1984. That legislation is not considered to form part of planning law.

The Government has recently introduced the Building Safety (Wales) Bill, that will make provision about the safety of certain residential buildings in connection with their occupation. As part of its further consideration of the content of a code of law relating to housing, the Government will consider whether that Bill would more appropriately form part of the code relating to planning or the code relating to housing.”²⁹⁷

260. The Welsh Government’s revised programme to improve the accessibility of Welsh law, published in January 2024, noted that the final content of the planning code was yet to be determined.²⁹⁸ It also stated that, during this Senedd term, the Welsh Government would:

²⁹³ Business Committee, Sixth Senedd procedural work: Priorities, July 2025, section 5, paragraph 36

²⁹⁴ Explanatory Memorandum, paragraph 42

²⁹⁵ Explanatory Memorandum, paragraph 43

²⁹⁶ Explanatory Memorandum, paragraph 46

²⁹⁷ Explanatory Memorandum, paragraphs 54 and 55

²⁹⁸ Welsh Government, The future of Welsh law: revised accessibility programme 2021 to 2026, January 2024, paragraph 26

- review and revise the existing draft taxonomy of subjects (originally published in 2018 as a Draft Taxonomy for Codes of Welsh Law²⁹⁹, and consulted upon in 2019³⁰⁰) so as to establish which enactments in devolved areas of law should belong to each tier of the taxonomy; and
- work with The National Archives team responsible for legislation.gov.uk to provide additional functionality on that site so that users may access Welsh law by subject.³⁰¹

261. We asked the Counsel General, in correspondence, to provide an update on the draft taxonomy which was consulted upon in 2019. In response, she stated that “updates on the Government’s programme to improve the accessibility of Welsh law will be made in the next annual report”, due later this year.³⁰²

262. RTPI Cymru said that they were not sure to what extent their members “fully understand the future benefits of codification”, although it could be something they could “help publicise”.³⁰³ In written evidence, they welcomed the “logical and sequential structure” that a code provides, and highlighted the importance of maintaining a code:

“It is important that this should be preserved whenever additions and modifications are made to the law in the future. We hope that the code will provide the ability to track changes in legislation in the future and be clear about what has been changed, when and why.”³⁰⁴

263. On the question of whether legislation on infrastructure should be included within a planning code, RTPI Cymru stated:

“... infrastructure goes hand-in-hand with planning ... and likewise the agriculture and countryside legislation, with things like public rights of way being particularly important given the

²⁹⁹ Welsh Government, Draft Taxonomy for Codes of Welsh Law, December 2018. As stated in the document, an indicative taxonomy was developed to assist in understanding how the law could be divided into Codes. A proposed Code on planning, building and land was, at the time, anticipated to include legislation on planning, infrastructure consents, acquisition of land and compulsory purchase, and building regulations and control.

³⁰⁰ Welsh Government, Consultation: The future of Welsh law: classification, consolidation and codification, October 2019

³⁰¹ Welsh Government, The future of Welsh law: revised accessibility programme 2021 to 2026, January 2024, paragraph 12

³⁰² Letter from the Counsel General, 10 October 2025, paragraph 33

³⁰³ LJC Committee, 6 October 2025, RoP [133]

³⁰⁴ PCB06 RTPI Cymru, page 2

rurality of much of Wales, and the way in which that goes hand in hand with planning. So, I wouldn't suggest it needs to be included now in this Bill, but, as part of a wider code ...".³⁰⁵

264. Annabel Graham Paul said in respect of the inclusion of infrastructure legislation in a code on planning:

"... from a practitioner point of view, planning and infrastructure consenting are very interlinked, particularly where you're dealing with infrastructure, where you shift from one system to another quite seamlessly as you just get more and more powerful pieces of infrastructure. So, whilst I fully accept that there needs to be separate Acts—and we have the Infrastructure (Wales) Act 2024 already for that—I think, in terms of perhaps looking at them holistically together, and perhaps in a code, that is something that should be treated as part and parcel of the same type of work."³⁰⁶

265. We asked the Counsel General to set out the Welsh Government's anticipated final content of a planning code. In response, she stated:

"... 'it will grow' is the answer. So, it will start off with the Bill and any subordinate legislation enacted under it, and that will grow as it goes, and then eventually you would expect it to include any guidance that's been put out, and any interpretation advice that's been put out, and so on. The idea is that ... you would have something that could comprehensively tell you what it is that's in force in Wales and how to interpret it."³⁰⁷

266. We also asked the Counsel General to explain why some areas of law, including compulsory purchase and infrastructure, were deemed not to be suitable for inclusion in the code. She told us in response:

"... you've got to draw the line somewhere. We've taken a view on where that line should be drawn. Other lines were possible, but that was the view we took. I think there really is, for a future Government, a piece of work to be done on codification of agricultural law that will touch up against this in a big way. There are others that we are looking at—compulsory purchases

³⁰⁵ LJC Committee, 6 October 2025, RoP [135]

³⁰⁶ LJC Committee, 6 October 2025, RoP [181]

³⁰⁷ LJC Committee, 3 November 2025, RoP [257]

were mentioned just recently, for example—but we’ve drawn a line where we think it makes sense.”³⁰⁸

267. When asked to clarify the platform on which the code will exist, the Counsel General expressed a “hope” that it will be published centrally, and would “expect UK legislative sites to carry it”, but that the Welsh Government would ensure it was accessible on its website.³⁰⁹ Claire Fife, Head of the Welsh Government’s Legislative Codes Office, explained:

“Currently, the historic environment code is published on Cyfraith Cymru. We would expect, if enacted, the planning code to be also on there, or maybe, if in the future we change that system, it would be on gov.wales. But it would be a Welsh Government website that is publishing the code—so, that’s the primary, the subordinate and the quasi legislation. We can signpost out to other legislation that might be of relevance to planning authorities.”³¹⁰

268. In respect of RTPI Cymru’s comments about the need to maintain and preserve a code of Welsh law, and to provide a way to “track changes” in legislation, the Counsel General said:

“I would expect, on a UK level, for Welsh legislation to be included ... so you ought to be able to do that. But we will ensure that our own websites also pick that up, so that you can look up the law as it was in force in 2016, or as it is in force now, because, actually, sometimes that’s relevant even in active cases. It’s not just a historical interest. Sometimes you’re looking at a certificate of lawful use or something, and you might need to know what the law said in the first place. There are occasions on which you actually require that for current practice.”³¹¹

Evaluating success

269. The Consequential Provisions Bill makes minor corrections to the 2023 Act.³¹² We therefore asked the Counsel General to set out the Welsh Government’s

³⁰⁸ LJC Committee, 3 November 2025, RoP [277]

³⁰⁹ LJC Committee, 3 November 2025, RoP [261]

³¹⁰ LJC Committee, 3 November 2025, RoP [262]

³¹¹ LJC Committee, 3 November 2025, RoP [267]

³¹² See, for example, paragraphs 42, 47, 48 and 50 of its Schedule 3.

anticipated approach to reviewing the Bills and their impact, once enacted and implemented. In response, she said:

*"Of course we need to review all Acts. I think I appeared in front of this committee when I was the member in charge of the legislation [Procedure, Publication and Repeals) (Wales)] Bill, and said that we needed to do reviews all the time but that we need to make sure that we review them in context and so on. I think it's particularly important to review legislation where the law is changing so that you make sure that you're doing it properly. But in this case ... the intention is that the legal effect of the current legislation is generally maintained. So, the review or evaluation should be focused on whether the consolidation has delivered the accessible and clearer understanding of the law, rather than the policy review that you would get with policy legislation, if that makes sense. It's also important that it happens, but what you're reviewing is: did the consolidation work? I can't commit the next Government to that review, but ... I agree that it's very important that it's done."*³¹³

270. Our report on the Bill which became the 2023 Act recommended that the Business Committee should review Standing Order 26C after the first two Consolidation Bills have been considered by the Senedd.³¹⁴ In its July 2025 report on its prioritisation of procedural matters for review, the Business Committee noted that, due to the timing of the introduction of the Planning Bill and the Consequential Provisions Bill, there would not be sufficient time remaining to enable a procedural review to be undertaken before the end of the Sixth Senedd.³¹⁵

Our view

271. We note the evidence received from the Counsel General, her officials and from stakeholders in respect of the implementation of the Bills, should they be passed and enacted.

272. We welcome the Welsh Government's plans in relation to this work, in particular the preparation of guidance and the provision of webinars to

³¹³ LJC Committee, 3 November 2025, RoP [273]

³¹⁴ LJC Committee, Report on the Historic Environment (Wales) Bill, December 2022, recommendation 14

³¹⁵ Business Committee, Sixth Senedd procedural work: Priorities, July 2025, section 5, paragraph 43

stakeholders. We also note the views from stakeholders that the documents accompanying the Bills are already proving to be useful to those familiarising themselves with the proposed legislation.

273. We acknowledge that it will be for the next Welsh Government to progress this important work, and therefore hope that it will be taken forward within the same anticipated timescale of 18 months from enactment, to ensure the benefits from the consolidation are realised as soon as possible.

274. We note the evidence we have heard about the importance of the provision of textbooks on planning law in Wales to assist practitioners working in this area. In this regard, we welcome the comments made by the Counsel General about the steps that the Welsh Government may have to take to enable such provision, and hope that the next Welsh Government adopts a similar position.

275. We also note the proposed approach of making the subordinate legislation that is necessary for the Bills to come into force in a timely manner, followed by a programme of restating and consolidating the remaining subordinate legislation on planning, to be conducted in a phased approach.

276. We thank the Counsel General and her officials for providing additional clarity and reassurance to stakeholders on the phasing of this work, but would like to associate ourselves with the comments made by stakeholders that an illustrative road map will be helpful to ascertain the key milestones of this work, and consequently the key opportunities available to stakeholders to help inform this programme.

Recommendation 6. The Counsel General should set out a road map for the making of subordinate legislation under the Planning (Wales) Bill, and highlight the opportunities available to stakeholders to inform the development of subordinate legislation.

277. We also note that the Planning Bill, once enacted, is intended to form part of a code of Welsh law on planning. While noting that the final content of the code is yet to be determined – and that, as stated by the Counsel General, its content is expected to grow over time – we acknowledge the anticipated benefits that a code of Welsh law on planning will bring to the accessibility of the law.

278. We also acknowledge the evidence we have heard from stakeholders about the proposed content of a code of Welsh law on planning, and that there may be merit in including the law on infrastructure within such a code. To help inform our consideration, it would have been helpful for us to have received an update from the Welsh Government on its proposed taxonomy of Welsh law, in order to

ascertain the intended boundaries between various areas of law. It is therefore disappointing that we were not provided with such an update from the Welsh Government, in response to our request, especially as nearly seven years have elapsed since it last published a version of its draft taxonomy.

279. We note that the Business Committee has determined that it is too soon to consider any proposed changes to the Senedd's Standing Orders for the purpose of ensuring that future changes to the law do not unnecessarily undermine previous decisions taken by the Senedd to create accessible codes of Welsh law. We however believe that there is an increasingly urgent need for appropriate structures to be in place to support codes of Welsh law, once they are created. In the absence of such structures, the status of codes of Welsh law may be diminished, and, as a result, we believe that there could be a regression in the broader accessibility of Welsh law.

280. We believe this is a matter that requires further consideration; however, we would like to reiterate the view expressed in our report on the first Consolidation Bill³¹⁶ that Members of the Senedd, Senedd committees and the Senedd Commission should be consulted as part of any review of the Senedd's Standing Orders in respect of codes of Welsh law.

281. We note the intentions of the Welsh Government around where a code of Welsh law on planning is expected to exist, but consider that further clarity is necessary as to the anticipated role of The National Archives in terms of publishing and maintaining the code, in addition to the expected role of the Welsh Government.

Recommendation 7. The Counsel General should clarify the anticipated role of The National Archives in respect of the creation and maintenance of codes of Welsh law.

282. Finally, we welcome the Counsel General's comments about the need to review the legislation, once enacted and implemented, in order to evaluate whether the consolidation has achieved its intended purpose of improving the accessibility of the law. We hope that the next Welsh Government will also recognise the importance of undertaking this work, and commit to conducting a post-implementation review at the first appropriate opportunity. In the same vein, we hope that the next Business Committee will also commit to undertaking a

³¹⁶ LJC Committee, Report on the Historic Environment (Wales) Bill, December 2022, recommendation 13

review of the procedures underpinning the Senedd's scrutiny of Consolidation Bills early in the next Senedd.

Annex 1: Documents annexed to the Explanatory Memorandum to the Bills

As annexes to the Explanatory Memorandum to the Planning (Wales) Bill and the Planning (Consequential Provisions) (Wales) Bill, the Welsh Government included the following documents.

Reference	Title
Annex A1	Explanatory Notes to the Planning (Wales) Bill
Annex A2	Explanatory Notes to the Planning (Consequential Provisions) (Wales) Bill
Annex B1	Table showing the origins of provisions in the Planning (Wales) Bill
Annex B2	Table showing the origins of provisions in the Planning (Consequential Provisions) (Wales) Bill
Annex C1	Tables showing the destinations of existing provisions restated in the Planning (Wales) Bill
Annex C2	Tables showing the destinations of existing provisions restated in the Planning (Consequential Provisions) (Wales) Bill
Annex D1	Explanation of changes made to existing provisions within the Planning (Wales) Bill (referred to as the Drafters' Notes)
Annex D2	Explanation of changes made to existing provisions within the Planning (Consequential Provisions) (Wales) Bill (referred to as the Drafters' Notes)
Annex E1	Correspondence from the Law Commission (16 May 2024)
Annex E2	Supplementary correspondence from the Law Commission (23 July 2025)

Annex 2: List of oral evidence sessions

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the Committee's website.

Date	Name and Organisation
<u>29 September 2025</u>	Professor Alison Young, Law Commissioner for Public Law and the Law in Wales, Law Commission of England and Wales Henni Ouahes, Head of Public Law for England and Wales, Law Commission of England and Wales
<u>6 October 2025</u>	Mark Hand, Director of Wales, Northern Ireland and Planning Aid England, Royal Town Planning Institute (RTPI) Cymru Rhian Brimble, Policy Officer (Wales), Royal Town Planning Institute (RTPI) Cymru Annabel Graham Paul, Wales representative Planning and Environment Bar Association
<u>13 October 2025</u>	Sara Morris, Director of Place and Engagement, Pembrokeshire Coast National Park Authority, Planning Officers Society Wales Dr Sarah Groves-Phillips, Corporate Manager for Planning Services, Ceredigion County Council, Planning Officers Society Wales
<u>3 November 2025</u>	Julie James MS, Counsel General and Minister for Delivery, Welsh Government Dion Thomas, Head of Legislation and Performance, Planning Directorate, Welsh Government Dr James George, Senior Legislative Counsel, Office of the Legislative Counsel, Welsh Government Claire Fife, Policy Advisor to the Counsel General and Head of the Legislative Codes Office, Welsh Government

Annex 3: List of written evidence

The following individuals and organisations provided written evidence to the Committee. All consultation responses can be viewed on the Committee's website.

Reference	Organisation or individual
PCB01	Rhondda Cynon Taf County Borough Council
PCB02	Historic Houses Wales
PCB03	Charles Felgate, Geldards LLP
PCB04	Planning Aid Wales
PCB05	CLA Cymru
PCB06	Royal Town Planning Institute (RTPI) Cymru
PCB07	Bannau Brycheiniog National Park Authority
PCB08	Network Rail
PCB09	UK Environmental Law Association (UKELA)
PCB10	Planning and Environment Bar Association
PCB11	Sara Hanrahan, Blake Morgan LLP

The Committee also received the following correspondence.

Title	Date
Letter from the Chair of the Pembrokeshire Coast National Park Authority	10 November 2025

Annex 4: Correspondence exchanged with the Counsel General

**Y Pwyllgor Deddfwriaeth,
Cyfiawnder a'r Cyfansoddiad**

**Legislation, Justice and
Constitution Committee**

Julie James MS

Counsel General and Minister for Delivery

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23 September 2025

Dear Julie

Scrutiny of the Welsh Government's planning Consolidation Bills

Now that you have introduced the Planning (Wales) Bill and the Planning (Consequential Provisions) (Wales) Bill into the Senedd, the Committee would welcome a response to the questions in the enclosed annex in order to assist our initial consideration of the Bills. We would be grateful to receive your response by 14 October 2025.

The Committee looks forward to taking evidence from you during our meeting on 3 November.

Yours sincerely,



Mike Hedges

Chair



**Senedd Cymru
Welsh Parliament**

ANNEX

General

Question 1. How have you specifically approached the consolidation of legislation that pre-dates devolution, in particular from a legislative drafting perspective?

Question 2. Were there challenges that were specific to this consolidation exercise that arose from the disentangling of Wales provisions from the existing England and Wales legislation, and which would not normally arise in a consolidation of legislation applying uniformly to England and Wales?

Question 3. As a pre-devolution “England and Wales” Act, the *Planning (Hazardous Substances) Act 1990* is not bilingual. The 1990 Act has not been included in this consolidation and we note the reasons set out in the Explanatory Memorandum at paragraph 46. We are aware that the main secondary legislation made under the Act is the Hazardous Substances (Wales) Regulations 2025, which are Wales-only. In your view, what grounds need to be met in order for you to seek to restate the relevant provisions of the 1990 Act as a Wales-only bilingual measure that is consistent with the Welsh Government’s ambitions for a Planning Code for Wales?

Question 4. Is there any law that you would have liked to consolidate but could not because of concerns regarding legislative competence?

Question 5. Is there any law that you would have liked to consolidate but could not for reasons other than the Senedd’s legislative competence? For example, because of the requirements of Standing Order 26C.2.

Question 6. The Senedd’s Standing Orders allow for a consolidation bill to incorporate rules of common law which are derived from decided cases.

- i) How has the desirability of putting common law rules on a statutory basis influenced provisions in the Bills?
- ii) Can you provide a note on the case law that is being put on a statutory basis in this consolidation exercise?

Role of the Law Commission for England and Wales

Question 7. The Law Commission has recommended that 15 matters are appropriate for inclusion in a consolidation Bill, under Standing Order 26C.2(v).

- i) Can you provide more detail on your discussions with the Law Commission and how they enabled you to determine that each of these are changes are appropriate to be made in a Consolidation Bill?

- ii) Can you provide details on the recommendations in the Law Commission's Planning Law in Wales report that you consider must await a Bill introduced under Standing Order 26 to further reform planning law in Wales and what work is in hand to progress these?

Drafting changes made throughout the Bill

Question 8. There are a number of instances where there are changes being made to the current law via the Bills that are described as "anomalies" in the Drafters' Notes which accompany the Planning (Wales) Bill. An example is in section 116(2) which gives a power of entry to the Welsh Ministers that did not previously exist. Another is in Schedule 19 paragraph 43(1)(a) which adds a "strategic highways company appointed under Part 1 of the Infrastructure Act 2015" to the list of appropriate authorities for Blight Notices. This is said to "fill a gap" that the 2015 Act should have been dealt with by amending the original provision in the 1990 Act. A further example is in section 72(5) which restates Part 1 of Schedule 5 to the 1990 Act (about conditions of minerals permissions) to the list of provisions that apply to called-in applications. Can you clarify your reasoning for why it is appropriate for such "anomalies" to be dealt with under Standing Order 26C.2(iv)? In responding, please specifically address the three examples drawn to your attention.

Question 9. The Planning (Wales) Bill replaces some significant terms used in existing Acts with new terms. For example, "completion order" is being changed to "termination order". The Drafters' Notes to the Bill state that these changes do not have any substantive effect but are intended to ensure that the terminology is more accurate or helpful.

Can you explain why you believe these terms are more accurate and helpful?

What consultation was undertaken with organisations and stakeholders on these terms and what were their views of these changes?

Question 10. In the Bills, you are changing the use of the terms "expedient" and "appropriate". In the Drafters' Notes to the Planning (Wales) Bill it states *"The legislation being consolidated confers numerous powers and duties on the Welsh Ministers and local authorities. In some cases, provisions enable or require Ministers or authorities to do something where they consider it "expedient" or "appropriate" to do so. The two words have the same effect, and in many cases they do not add anything to the general requirements of administrative law for public authorities to act reasonably and with regard to relevant considerations, since it would be unreasonable for an authority to take steps that it considered "inexpedient" or "inappropriate". Many of the references to what is "expedient" or "appropriate" have therefore been omitted, but references have been retained where they do appear to add something or where the provisions would not make sense without them."* This was something the Committee looked at when scrutinising the Historic Environment (Wales) Bill. As a result of the Committee's questioning, the Welsh Government reviewed the Bill and, at Detailed Committee Consideration stage, three amendments were made to the Bill. To assist our consideration of this matter, please would you provide a complete list of where in the Bills have these changes been made.

Subordinate legislation

Question 11. How much priority have you placed on the pursuit of moving procedural detail in current Acts to regulations and bringing foundational provisions in secondary legislation that have been unchanged for a long time to the face of the Planning (Wales) Bill?

Question 12. Can you provide details of the overall picture of the effect of the consolidation on the regulation-making powers that will need to be exercised under the Bill, including:

- i) a list of existing subordinate legislation being consolidated into the Bills (i.e. being moved from regulations to the face of the Bill);
a list of provisions currently in Acts that will now be dealt with in subordinate legislation;
an assessment of whether the consolidation exercise will result in an increase in regulation-making powers or will the overall balance see more provisions being brought up on to the face of the Act.

Question 13. Can you provide an indication of the timescale within which the relevant subordinate legislation will be made and/or laid before the Senedd (subject to the Bill's passing and enactment).

Question 14. Can you provide information about the Welsh Government's planned programme for restating regulations under the Act (subject to the Bill's passing and enactment) and what the scheme of restatement will look like? For example, is the Government considering bringing forward fewer but longer sets of regulations?

Codification of Welsh Law

Question 15. Can you provide an update on the current proposed taxonomy for the Codification of Welsh Law.



Eich cyf/Your ref
Ein cyf/Our ref

Mike Hedges MS, Chair
Legislation, Justice and Constitution Committee

10 Hydref 2025

Annwyl Mike

Planning consolidation Bills

Thank you for your letter of 23 September 2025; my responses to the Committee's questions are below and in Annexes 1 and 2.

General

Question 1: approach to consolidating legislation pre-dating devolution

1. Most of the legislation consolidated in the Planning (Wales) Bill ("the Planning Bill") pre-dates devolution, and the fact that its text does not fully reflect devolution is one of the reasons why consolidation is desirable. As explained in the introduction to the Drafters' Notes for the Planning Bill (in Annex D1 to the Explanatory Memorandum), the Bill has been drafted to reflect how existing planning legislation has been affected by the Government of Wales Acts and transfer of functions orders made under them (as well as by various other changes in the law).

Question 2: disentangling provisions for Wales from existing legislation

2. This is only the second consolidation project that the Welsh Government has undertaken, so it is too early to say what is "normal" in a consolidation exercise. However, we do not think that the challenges of "disentangling" Wales from England that have arisen in this project are unique to planning law. Where the provisions being consolidated apply to England as well as Wales, we have had to consider carefully the extent to which they are relevant to Wales and how they apply in relation to Wales, and we have had to ensure that the new provisions for Wales and the consequential amendments to existing legislation adopt a consistent approach that does not create unwanted gaps or overlaps. These issues also arose in the consolidation of historic environment legislation, and we expect them to arise in future consolidation exercises.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Question 3: Planning (Hazardous Substances) Act 1990

3. The Explanatory Memorandum touches on the possibility of a future consolidation of this legislation and it was something we identified as a potential project in our programme to improve the accessibility of Welsh law.
4. No representations have been made to the Welsh Government calling for the consolidation of this area of the law. We suspect that this is partly because the law is already predominantly located in the Planning (Hazardous Substances) Act 1990 and partly because the number of cases associated with hazardous substances consent each year is very low compared to other areas of work of planning authorities.
5. This Government continues to be guided by the four criteria set out in the *Future of Welsh Law* when considering projects for consolidation and codification. Whilst future consolidation projects are a matter for the next and future programmes, I continue to believe there would be value in consolidating the planning control aspects of the hazardous substances regime. However, I am also conscious that there are potentially higher priority areas where focus will need to turn and where there is already stakeholder interest in simplifying and modernising legislation in the way we have with historic environment law and now town and country planning.

Questions 4 and 5: Law not consolidated

6. There were no areas of law that we would have liked to consolidate but could not, either because of concerns regarding legislative competence or for other reasons.

Question 6: Incorporation of common law

7. As set out in the Llywydd's guidance on Standing Order 26C.2, consolidation Bills may incorporate the effect of case law that affects the meaning of an existing provision (for example, by clarifying its meaning or by expanding or limiting its effect in a way that is not set out on the face of the provision).
8. Accordingly, where there is settled case law affecting the operation of legislation within the scope of the consolidation exercise, we have sought to incorporate its effect. Doing so increases the provisions' accessibility and provides a more complete restatement. It is the desirability of making the law as accessible and complete as possible that has caused us to incorporate this specific case law, not a desire to incorporate common law rules in and of itself.
9. The table of origins and Drafters' Notes for the Planning Bill (in Annexes B1 and D1 to the Explanatory Memorandum) identify the provisions of the Bill that incorporate the effect of case law. Annex 1 to this letter provides a summary of the case law that has been incorporated.

Role of the Law Commission for England and Wales

Question 7(i): engagement with the Law Commission

10. I refer the Committee to the comprehensive response given by Professor Young when she gave evidence to you on 29 September. I have nothing further to add, save to confirm that separately the Law Commission provided advice to me so that I could reach a decision on making the statements required by Standing Order 26C.11.

Question 7(ii): recommendations suitable for legislative reform

11. The Government provided its Final Response to the Law Commission's report on 10 November 2020¹; in that response we identified the following recommendations that would need to be addressed in a separate law reform Bill:

- | | | |
|-----------|---------|--------|
| • 5-4 | • 10-8 | • 13-4 |
| • 8-5 | • 10-9 | • 13-5 |
| • 8-7 | • 10-10 | • 13-6 |
| • 8-13(4) | • 10-11 | • 13-7 |
| • 8-18 | • 13-1A | • 13-8 |
| • 8-30 | • 13-1B | • 13-9 |
| • 10-4 | • 13-2 | • 15-5 |
| • 10-5 | • 13-3 | • 14-7 |
| | | • 16-7 |

The Government's position regarding these recommendations remains unchanged.

12. The Government now considers the following recommendations should also be considered as part of any future planning law reforms, because they would involve policy changes falling outside the scope of consolidation and/or require further exploration with stakeholders:

- | | | |
|------------|---------|--------|
| • 7-5 | • 12-25 | • 16-5 |
| • 8-23(2) | • 14-9 | • 16-6 |
| • 11-8 | • 14-12 | • 17-1 |
| • 12-10 | • 14-13 | • 17-2 |
| • 12-12(2) | • 15-15 | |
| • 12-24 | • 15-16 | |

13. For completeness please also note that:

- recommendations 13-10 and 13-11 were delivered through the Historic Environment (Wales) Act 2023;
- recommendations 6-2, 16-8, 16-11 and 16-12 have been implemented through the Legislation (Procedure, Publication and Repeals) (Wales) Act 2025; and
- whilst recommendation 9-2 is now redundant following the enactment of the Infrastructure (Wales) Act 2024, its underlying principle has been taken forward to inform the relevant provisions of this Act.

14. While it will be for the next Government to decide whether to take forward the outstanding recommendations as part of any future planning law reform Bill, the Planning Bill will significantly simplify the process of implementing future reforms as it brings all existing legislation together in a single, coherent bilingual framework.

Drafting changes made throughout the Bill

Question 8: "anomalies"

15. As the Llywydd's guidance issued under SO26C.3 sets out, the process of consolidation is "likely to reveal inconsistencies and anomalies in existing legislation." That guidance also makes clear that the Senedd permits the correction of mistakes and anomalies in

¹ see <https://www.gov.wales/detailed-response-law-commission-report-planning-law-wales>.

the legislation (under SO26C.2(iv)) and as you have identified, the Drafters' Notes in Annexes D1 and D2 to the Explanatory Memorandum explain where this has happened.

Section 116(2) of the Planning Bill

16. The addition of a power for the Welsh Ministers to authorise entry on land to determine whether a stop notice should be issued is considered to be a minor change that is appropriate to make in the interests of achieving a satisfactory consolidation. As explained in the Drafters' Notes, the changes made in 1991 resulted in what appears to be an unintended gap in the Welsh Ministers' powers. The absence of a power to authorise entry could frustrate the exercise of other powers that the Welsh Ministers have (such as the powers to issue a stop notice and prosecute for non-compliance).

Paragraph 43(1)(a) of Schedule 19 to the Planning Bill

17. Section 169(2) of the Town and Country Planning Act 1990 ("the 1990 Act") is concerned with disputes as to the identity of an appropriate authority (i.e. the person upon whom a blight notice can be served). A strategic highways company may be an appropriate authority (see section 169(1) of the 1990 Act and paragraphs 16 and 18 of Schedule 13 to that Act as amended by the Infrastructure Act 2015, Schedule 1, paragraph 109). Including a reference to a strategic highways company in section 169(2) seems to be a consequential amendment that should have been made in the Infrastructure Act 2015. Filling what appears to be an unintended gap ensures clarity about who determines questions involving a strategic highway company, treating it in the same way as other highways authorities. It is a minor change that is appropriate to make in the interests of achieving a satisfactory consolidation.

Section 72(5) of the Planning Bill

18. Part 1 of Schedule 5 to the 1990 Act provides for conditions relating to mineral working imposed on grant of permission. Before the 1990 Act consolidated the Town and Country Planning Act 1971, as amended by the Town and Country Planning (Minerals) Act 1981, provision about such conditions were applied to both called-in applications and appeals. Section 79(4) of the 1990 Act applies Part 1 of Schedule 5 to appeals to the Welsh Ministers, but no provision is made to apply Part 1 of Schedule 5 to called-in applications. This appears to have been an oversight and leaves an unintentional gap. Filling it is considered to be a minor change that is appropriate to make in the interests of achieving a satisfactory consolidation.

Question 9: Terminology

19. The introduction to the Drafters' Notes for the Planning Bill (in Annex D1 to the Explanatory Memorandum) explains the main terminology changes that are made in the Bill. Annex 2 to this letter includes the rationale for the changes and why they are considered to aid accessibility. It also sets out what consultation has been undertaken. Consultation or engagement was not considered to be required for all the changes as they simply reflect the intent and effect of the provisions more accurately and use language that is familiar to practitioners and stakeholders.
20. When we published a draft of the Planning Bill in June, we also published a document outlining several of the proposed terminology changes and brought the document to the attention of stakeholders. No queries or concerns were raised by stakeholders regarding the suggested changes to terminology.

Question 10: “expedient” and “appropriate”

21. The provisions of the 1990 Act and other primary legislation that use either “expedient” or “appropriate” and that are restated in the Planning Bill without using either of those terms are listed below.

References to “expedient”

1990 Act provision	Bill provision
s 2(1B)	s 8(1)
s 61B(8)(a)	Sch 1, para 5(2)
s 72(1)(a)	s 67(2)
s 96(1)	s 98(3)
s 97(1)	s 97(1)
s 98(6)	Sch 7, para 2(5)
s 100(1)	s 102(1)
s 103(1)	Sch 14, para 1(6)
s 141(2)	Sch 12, para 6(3)
s 171E(1)(b)	s 120(1)(b)
s 172(1)(b)	s 128(1) and (2)(a)
s 182(1)	s 144(1)
s 183(1)	s 145(1)
s 185(1)	s 150(1)
s 187B(1)	s 153(1)
s 214A(1)	s 251(1)
s 243(1) and (2)	s 270(1) to (3)
s 247(2)	s 283(1) and 288(1)
s 247(4)	s 283(5) and 288(3)
s 248(2)	s 281(2)
s 261(3)	s 296(5)
s 275(1)	s 317(1)
s 275(3)	s 317(1)
s 275(5)(c) and (d)	s 317(5) (c) and (d)
s 306(3)	s 395(4)
Sch 5, para 4(4)	Sch 3, para 3(4)
Sch 9, para 4(1)	Sch 15, para 2(6)
Sch 9, para 7(1)	Sch 15, para 6(7)
Sch 9, para 11(1)	s 206(2) and (3), Sch 15, para 1(2), (3), 5(2) and (3)
Sch 14, para 6	Sch 17, para 19

Environment Act 1995 provision	Bill provision
Sch 14, para 2(1) (“mining site”)	Sch 9, para 1(2)(a)
Sch 14, para 2(2)	Sch 9, para 1(3)
Sch 14, para 3(4)	Sch 9, para 2(3)(c)

Planning and Compulsory Purchase Act 2004 provision	Bill provision
s 122(3)	s 407(3)

Planning Act 2008 provision	Bill provision
s 223(4)	s 203(3)

References to “appropriate”

1990 Act provision	Bill provision
s 78(4BB)	s 75(2)
s 92(4)	s 94(1)(a)
s 195(1DB)	s 161(2)
s 296A(3)	s 403(2)
s 319B(2)	s 366(3)
Sch 14, para 1(4)	Sch 17, para 11(3)

22. Section 4 of the Planning (Consequential Provisions) (Wales) Bill incorporates the powers conferred by sections 9(1) and 243(3) of the 1990 Act, without including the words “necessary or expedient” that appear in those provisions.

Subordinate legislation

Question 11: balance between primary and secondary legislation

23. Considerable thought has been given to achieving the correct balance between primary and secondary legislation in the consolidation process, with provisions being considered on a case-by-case basis, taking into account matters such as:

- a. the importance of the provisions both in terms of their significance to planning law and to the flow of the Bill (whether inclusion in the Bill would achieve a more coherent regime or would disrupt accessibility);
- b. the need to deal with similar provisions in a similar way, so that there is consistency in approach to the split between primary and secondary legislation;
- c. whether secondary legislation included modifications of primary legislation that would be better dealt with in the Bill; and
- d. whether significant provisions in secondary legislation had not changed for some considerable time.

Question 12: effect on regulation-making powers to be exercised

List of existing subordinate legislation being consolidated

24. The table of destinations in Annex C1 to the Explanatory Memorandum lists the subordinate legislation that is being consolidated (see pages 68-72 of the English table and pages 70-73 of the Welsh table).

List of matters to now be dealt with in subordinate legislation

25. The Drafters’ Notes for the Planning Bill (in Annex D1 to the Explanatory Memorandum) include details of provisions currently in Acts that will (or may) now be dealt with in subordinate legislation. See the Drafters’ Notes for sections 63 and 97, paragraph 6 of Schedule 8, paragraphs 5(6) and (7) and 13 of Schedule 9, and sections 131(8), 133, 162, 172(3) and 244.

Assessment of changes

26. Overall, more provision has been moved from regulations to the face of the Bill, in line with the matters outlined in our response to question 11. For example:

- a. modifications to primary legislation made by the Town and Country Planning (Minerals) Regulations 1995 (S.I. 1995/2863) are now dealt with in the Bill, and
- b. as explained at paragraphs 37 and 38 of the Drafters' Notes, provisions about the manner and time period for making claims for compensation currently found in regulation 12 of the Town and Country Planning General Regulations 1992 (S.I. 1992/1492) have been restated in the Bill (subject to a power to make regulations amending time limits in section 391 of the Bill).

27. A smaller number of provisions have been moved from primary legislation and will instead be included in secondary legislation. For example:

- a. procedural matters which are more appropriately dealt with in secondary legislation such as the omission of a requirement to consult a site licensing authority before granting planning permission for a caravan site currently found in section 71(3) and (4) of the 1990 Act, and
- b. where the Law Commission have recommended a change as in recommendations 12-14 and 8-28(2).

Question 13 – Timescales for subordinate legislation

28. Commencement is expected to take place within 18 months from Royal Assent. It is anticipated a package of Welsh statutory instruments will be made, and or, laid before the Senedd during this period.

29. As noted at paragraph 64 of the Explanatory Memorandum, if the Bills are enacted, this work will include preparing new regulations to make consequential amendments to existing subordinate legislation. This will include revoking provisions that have been consolidated into the (then) Planning (Wales) Act.

Question 14 – Restating regulations

30. The Government's programme to improve the accessibility of Welsh law includes a phased project aimed at consolidating key town and country planning subordinate legislation. As set out at paragraph 20(b) of the programme we intend to undertake a fuller analysis of this work now that the main work drafting of the consolidation Bills has concluded.

31. As noted above a small number of Welsh statutory instruments (including some of those which will be most affected by changes made in the Act) will be restated within 18 months from Royal Assent. The timescales for restating the remaining legislation will be guided by whether major reforms to a particular instrument are proposed and to what extent the enactment is used by practitioners. It is not currently proposed to bring forward longer but fewer regulations, but this will be kept under review as our analysis is concluded and a programme developed.

32. I would anticipate that the next Government would include further details on this work in the next programme to improve the accessibility of Welsh law.

Question 15 – Taxonomy of Welsh law

33. Updates on the Government's programme to improve the accessibility of Welsh law will be made in the next annual report due later this year.

Yn gywir,



Julie James AS/MS

Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery

ANNEX 1 – NOTE ON CASE LAW INCORPORATED IN PLANNING (WALES) BILL

Sections 17(6) and 19(7)

Incorporates *R (Persimmon Homes Ltd) v Vale of Glamorgan Council* [2010] EWHC 535 (Admin) by clarifying that the references in sections 60M(6)(a) and 62(5)(a) of the Planning and Compulsory Purchase Act 2004 to “current national policies” are references to policies issued by the Welsh Ministers.

Section 113(1) (second row of table)

Incorporates *Van Dyck v Secretary of State for the Environment* [1993] 1 PLR 124 by clarifying that the reference in section 171B(2) of the Town and Country Planning Act 1990 to “change of use of any building to use as a single dwellinghouse” is a reference to changing the use of a building to use as a dwelling or, if a building was previously used as one or more dwellings, as use as a different number of dwellings.

Section 128(5) and (6)

Incorporates *Secretary of State for the Environment, Transport and the Regions v Wyatt Bros (Oxford) Ltd* [2002] PLCR 18 by making clear that the reference in section 173(3) of the Town and Country Planning Act 1990 to an enforcement notice specifying steps in order to achieve “any of the following purposes” includes either or both of the purposes specified in section 173(4) (despite the “or” after paragraph (a) of that subsection).

Section 246(3)

Incorporates *Distinctive Properties (Ascot) Ltd v Secretary of State* [2015] EWCA Civ 1250 by clarifying that, in practice, the requirement in section 206(3) of the Town and Country Planning Act 1990 to plant “the same number of trees” as have been removed etc. means that where the exact number of trees removed etc. is not known, the requirement is to plant the best estimate that can reasonably be made of the number of trees removed. In *Distinctive Properties*, where the tree replacement notice in question imposed a requirement to use standard planting densities to calculate the number of replacement trees to be planted, it was held that an acceptable estimate had been made of the number of trees removed etc.

Section 263(2)

Incorporates *Clays Lane Housing Co-operative v Housing Corporation* [2005] 1 WLR 2229 and *Horada v Secretary of State for Communities and Local Government* [2017] 2 All ER 86 by providing that a local authority may only compulsorily acquire land for planning purposes under section 226(1) of the Town and Country Planning Act 1990 where there is a compelling case in the public interest for doing so.

Schedule 12, paragraph 1(3)

Incorporates *Hudscott Estates (East) Ltd v Secretary of State for the Environment, Transport and the Regions* (2001) 82 P&CR 8 and *R (Stafford Borough Council) v Secretary of State for Communities and Local Government* [2011] EWHC 936 (Admin) by clarifying the meaning of “unauthorised prospective use of land” in the provisions in section 138 of the Town and Country Planning Act 1990 on the meaning of “reasonably beneficial use”.

It was held in *Hudscott* that the reference in section 138(2)(a) of the 1990 Act to development other than any development specified in paragraph 1 or 2 of Schedule 3 to the 1990 Act has no relevance to whether or not land is capable of reasonably beneficial use. The reference is, therefore, otiose, and is not restated (and in any case, Schedule 3 to the 1990 Act is not restated in the Bill).

The judgment in the *Stafford* case sets out that the only uses that can be considered in determining whether land has a reasonably beneficial use are those for which no planning

permission is required or for which planning permission is deemed to be granted. Paragraph 1(3) of Schedule 12 to the Bill therefore provides that a prospective use of land must be ignored if it would involve development for which planning permission has not been granted. The reference in paragraph 1(3) to development for which neither a planning authority or the Welsh Ministers have undertaken to grant permission has been included for consistency with section 110(3)(c) of the Bill; that section provides that an undertaking to grant permission is relevant to whether land can be made usable, so it would not make sense to also require such an undertaking to be ignored in applying paragraph 1(3) of Schedule 12 to the Bill in determining whether reasonably beneficial use may be made of land.

Schedule 12, paragraph 1(4)

Incorporates *Balco Transport Services v Secretary of State for the Environment (No. 2)* [1986] 1 WLR 88 by providing that land is not incapable of reasonably beneficial use in its existing state if that state was caused by a breach of planning control, an enforcement notice has been, or could be, issued to require steps to be taken to remedy the breach or any injury to amenity caused by it, and the land would be usable if the steps were taken.

The judgment in *Balco* was in response to paragraph 18 of Welsh Office Circular 22/83, which provided that in determining whether a purchase notice ought to be confirmed, Ministers are not interested in the previous state of land to which a purchase notice relates, *apart from where it was caused by activities carried out in breach of planning control*. The judgment modified the effect of the Circular to make clear that purchase notices must not be confirmed where the condition of the land has been caused by development carried out without planning permission and that an enforcement notice has been, or could be, issued to the owner or occupier to require steps to be taken to restore the land, and that the land would then be capable of reasonably beneficial use (i.e. a landowner should not be able to serve a purchase notice in respect of land that is unusable because of the landowner's own actions in breach of planning control, in relation to which an enforcement notice has been, or may be, issued).

Schedule 12, paragraph 4(1)

Incorporates *Wain v Secretary of State for the Environment* (1982) 262 EG 337 and *Cook and Woodham v Winchester City Council* (1994) 69 P&CR 99, which make clear that purchase notices served under section 137 of the Town and Country Planning Act 1990 must relate to all of the land to which the planning decision or order relates (i.e. the planning decision or order that leads to the service of the purchase notice), and no other land.

Schedule 12, paragraph 4(6) and (7)

Incorporates *White v Herefordshire Council* [2008] 1 WLR 954, which clarifies that purchase notices served under section 137 of the Town and Country Planning Act 1990 cannot be amended but that further notices may be served in place of earlier notices.

Schedule 12, paragraph 9(3)

Incorporates another element of the judgment in the *White* case, which clarifies that section 143(2) of the Town and Country Planning Act 1990 applies where the purchase notice has been sent to the Welsh Ministers for confirmation.

Also incorporates *Sheppard v Secretary of State for the Environment* [1975] 1 EGLR 133 by omitting the reference in section 143(2)(c) of the 1990 Act to the Welsh Ministers giving notice to the owner of the land that they do "not propose" to confirm the notice. Instead, the restatement at paragraph 9(3) applies where the Welsh Ministers have made a decision to not confirm a purchase notice.

ANNEX 2 – CHANGES TO TERMINOLOGY

Note: references to recommendations are references to recommendations in the Law Commission’s 2018 report *Planning Law in Wales*

Current term or phrase	Proposed term or phrase	Rationale	Consultation
Appointed person (or person appointed by the Welsh Ministers)	Inspectors	Implements recommendation 5-11	Undertaken by the Law Commission to inform its final report (and see the consultation paper and final report for its rationale) The Government’s consultation on new regulations about preserving trees and woodlands ² outlined the proposed approach to include woodland preservation orders in the Bill and gave stakeholders an opportunity to comment. No issues were raised about the term.
Material considerations	Relevant considerations	Implements recommendation 5-2(2)	
Tree preservation order	Tree preservation order Woodland preservation order	Implements recommendation 15-3(4)	
Local planning authority and Mineral planning authority	Planning authority	Implements recommendation 5-13	
Hazardous substances authority	Planning authority	The hazardous substances authority for an area in Wales will always be the planning authority. The proposed change therefore reflects this position.	No engagement considered necessary as the change more accurately reflects the effect of the power.
Unified district (of joint planning board)	Joint planning area	Avoids outdated reference to districts (which no longer exist in Wales)	No engagement considered necessary as change more accurately reflects current arrangements
Planning contravention notice	Enforcement investigation notice	Changes reflect the effect of the provisions more accurately.	No engagement considered necessary as changes more accurately reflect the intent and effect of the powers. A stakeholder event was held on the minerals provisions, following the publication of the draft Bill in June 2025, which identified the change and no comments were raised.
Completion notice	Termination order	For example, a “completion notice” will state that a permission will cease to have effect at the end of a specified period, but it cannot guarantee completion of the development.	
Suspension order Supplementary suspension order	Protection order	A “suspension order” may be issued where mining operations have	

² [Preserving trees and woodlands: new regulations | GOV.WALES](#)

Current term or phrase	Proposed term or phrase	Rationale	Consultation
		ceased temporarily. It requires the recipient to take steps to ensure that the environment is protected until the use restarts. The focus of the order is environmental protection. A “supplementary suspension order” simply makes further provision to that end or revokes the original order; it does not need a different name.	
Notice under section 215 of the 1990 Act	Maintenance of land notice	The Bill has generally been drafted so that every type of order or notice has a specific name, clarifying what it does, rather than being referred to by the number of the section or regulation that creates it. This makes the legislation more accessible – particularly in the period immediately following the coming into effect of a consolidation Bill, when the new section numbers will not yet be well-known.	No engagement considered necessary as the approach reflects many of the terms that are already used in practice such as maintenance of land notice (which is used by PEDW in their guidance documents^{3,4}) or tree replacement notice which is used in Welsh Government guidance including Technical Advice Note 10⁵. The term “discontinuance order” is well-established, used by practitioners and referred to in the Welsh Government <i>Development Management Manual</i>⁶ and mineral guidance on the review of mineral planning permissions 1995⁷.
Notice under section 207 of the 1990 Act	Tree replacement notice		
Notice under section 330 of the 1990 Act	Information notice		
Order under section 102 of the 1990 Act Order under paragraph 1 of schedule 9 to the 1990 Act	Discontinuance order		
Regulations under section 220 of the 1990 Act	Control of advertisement regulations		
Appropriate authority (in relation to Crown land)	Appropriate Crown authority	Minor changes that will increase the relevant provisions’ accessibility and achieve consistency in the Bill. Use of more common terminology	Due to the minor nature of the changes, no consultation or engagement was undertaken.
Ecclesiastical property	Church of England land		

³ [Maintenance of land appeals | GOV.WALES](#)

⁴ [maintenance-of-land-notice.pdf](#)

⁵ [Technical advice note \(TAN\) 10: tree preservation orders | GOV.WALES](#)

⁶ [Development management manual | GOV.WALES](#)

⁷ [minerals-planning-guidance-14.pdf](#)

Current term or phrase	Proposed term or phrase	Rationale	Consultation
Former PTO	Former public telecommunications operator	reflects modern drafting and simplifies terms in the Bill. Not using acronyms and having names in full as well as moving away from cross references to other sections in Acts improves accessibility.	
Fuel or field garden allotment	Allotment		
Holder of a licence under section 6 of the Electricity Act 1989	Electricity licensee		
Person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000	Air traffic licensee		
Winning and working of minerals	Mining operations	Change to “mining operations” implements recommendation 18-5.	The change to mining operations was the subject of public consultation undertaken by the Law Commission to inform its final report. Engagement was undertaken with planning authority minerals leads for North and South Wales which included reviewing proposed definition and terminology changes for some of the definitions including mining operations, minerals development, waste and deposit(ing) of mineral waste. They were not aware of any challenges around the proposed definitions and were content with the approach taken to the drafting. A stakeholder event was held on the minerals provisions following the publication of the draft Bill in June 2025, which identified the other changes including the use of pre-1948 minerals permissions, and no longer needing to restate Phase I and Phase II sites. No comments
Development consisting of the winning and working of minerals or involving the depositing of mineral waste	Minerals development	Bringing together the minerals and waste provisions from a number of enactments has resulted in changes to terminology. Various different expressions had been used to refer to similar things and by bringing them together enabled concise terminology with clear meaning to be used, increasing accessibility whilst retaining the current legal effect.	
Refuse or waste materials	Waste		
Mineral-working deposit	Deposit of mineral waste		
Old mining permission	Pre-1948 minerals permission		
Phase I site or Phase II site	Site shown in a list prepared under paragraph 3 of Schedule 13 to the Environment Act 1995	The Environment Act 1995 introduced a regime where sites that had the benefit of minerals permissions issued between July 1948 and February 1982 had to be included in a list of “Phase I sites” and “Phase II sites”. Many of the deadlines and procedural requirements tied to Phase I and II sites have long since passed. As such, the categorisation no longer serves a practical purpose.	

Current term or phrase	Proposed term or phrase	Rationale	Consultation
		There does need to be some reference to the lists due to the provisions relating to dormant sites and the periodic reviews of minerals permissions in the Bill.	were raised over these proposed changes.

Julie James MS

Counsel General and Minister for Delivery

21 October 2025

Dear Julie

Planning Consolidation Bills

Thank you for your letter of 10 October 2025 in response to my letter of 23 September 2025 in respect of the Planning (Wales) Bill and the Planning (Consequential Provisions) (Wales) Bill.

As you will be aware, the Committee recently held a public consultation to inform its initial consideration of the Bills.

We considered the responses received at our meeting of 20 October, and agreed to bring them to your attention ahead of your appearance before the Committee on 3 November 2025, when we anticipate to discuss with you the matters raised. Some of those who responded have raised questions which might be useful for further consideration by the drafters, for example; I trust that bringing such questions to your attention at this stage will make for a more informed and effective scrutiny session.

Yours sincerely,



Mike Hedges

Chair





Mike Hedges MS, Chair
Legislation, Justice and Constitution Committee

28 Hydref 2025

Annwyl Mike,

Planning consolidation Bills

Thank you for your letter of 21 October 2025. Given the technical nature of a number of the points raised in the written evidence to the Committee, the Office of the Legislative Counsel has prepared an explanation which I attach as an Annex to inform the Committee's deliberations.

There are a handful of matters that I am responding to directly:

1. A number of respondents in the oral and written evidence given to the Committee have referred to the fact that the Planning (Wales) Bill uses the term "relevant considerations" instead of "material considerations". Where respondents have expressed concerns, they have related to whether it will be sufficiently clear that there is no change of meaning and that existing case law about "material considerations" will continue to apply.

The Law Commission recommended this change in their report on *Planning Law in Wales* (recommendation 5-2). Paragraphs 5.28 to 5.32 of the Commission's consultation paper noted that the duty to have regard to material considerations is a statutory version of the general public law duty for decision-makers to have regard to all relevant considerations, and that the highest courts have stated on a number of occasions that "material" in this context means "relevant". The Commission thought that "relevant considerations" was more likely to be widely understood than the technical-sounding "material considerations".

The Government accepted the recommendation for the reasons given by the Commission. As set out in paragraph 260 of the Explanatory Notes to the Planning (Wales) Bill, we consider that using "relevant considerations" does not involve any change in the law. That should be clear, because the change of terminology reflects how the existing law has been interpreted by the courts. If the Bill is enacted, guidance to be published by the Welsh Government (as highlighted in paragraph 66 of the Explanatory Memorandum), along with updates to existing guidance to reflect the Bill, can also explain this point.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

As well as being used in the Planning (Wales) Bill, the phrase “relevant considerations” has already been used in both the Historic Environment (Wales) Act 2023 and the Infrastructure (Wales) Act 2024. No concerns have been raised about that, and we consider it desirable to maintain consistency between these related pieces of legislation.

2. Some respondents have also suggested that the sustainable development duties in sections 11 and 51 of the Bill, which apply to making development plans and deciding planning applications, should apply more generally, including to enforcement. Sections 11 and 51 of the Bill reproduce the existing scope of the duty in section 2 of the Planning (Wales) Act 2015, which was debated and agreed by the Senedd during scrutiny of the 2015 Act. Extending the duty to other functions would be a change in the law. There are also planning functions to which the duty is clearly irrelevant (such as powers to make regulations about procedural matters and functions relating to certificates of lawfulness and blight notices), so applying it generally to all functions under the Bill could give a misleading impression about its actual scope.
3. Finally, a number of respondents have raised questions about the effect of the consolidation exercise on existing subordinate legislation. I want to provide some reassurance that the coming into force of the Planning (Wales) Bill will not change the effect of any of the existing subordinate legislation (except in those cases where provisions currently in subordinate legislation are being restated in the Bill – which are all identified in the tables of origins and destinations and the Drafters’ Notes). This is another point that can be addressed in guidance if the Bill is enacted.

Section 35 of the Legislation (Wales) Act 2019 specifically deals with the situation where existing legislation is repealed and re-enacted in an Act of the Senedd. Section 35(3) provides that, if subordinate legislation that was made under the repealed legislation could also be made under the new Act, it continues to have effect as if it had been made under the new Act. Similar provisions have applied to earlier consolidations. For example, the Town and Country Planning (Use Classes) Order 1987 was made under the Town and Country Planning Act 1971 but now has effect as if it had been made under the Town and Country Planning Act 1990. If the Planning (Wales) Bill is enacted, when the Bill comes into force that order will continue to have effect in relation to England as if made under the 1990 Act, and in relation to Wales as if made under the Bill.

Section 35(2) of the 2019 Act also ensures that any references in subordinate legislation to provisions that are consolidated in the Planning (Wales) Bill will in future be read as referring to the corresponding provisions of the Bill. Although section 35(2) ensures that subordinate legislation continues to work correctly, it does not help the accessibility of the law in this context. I would therefore expect regulations to be made under section 4 of the Planning (Consequential Provisions) (Wales) Bill textually amending references in subordinate legislation so that they refer to the correct provisions of the Bill.

Yn gywir,



Julie James AS/MS

Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery

ANNEX PREPARED BY THE OFFICE OF THE LEGISLATIVE COUNSEL

Note: references to the “Planning Bill” are to the Planning (Wales) Bill.

Tai Hanesyddol Cymru / Historic Houses Wales

Section 404, Planning Bill – use of “preserve”

1. The response draws attention to the word “preserving” in section 404 of the Planning Bill and suggests that it may be too strict. Section 404 restates section 314A of the Town and Country Planning Act 1990, which already uses the word “preserving”. Section 314A was inserted into the 1990 Act by the Historic Environment (Wales) Act 2023, and the question of whether to refer to “conservation” instead of “preservation” was raised in evidence from Historic Houses Wales and CLA Cymru during the Senedd’s consideration of the 2023 Act. The Government’s reasons for retaining the existing language were recorded in paragraphs 185-195 of the Committee’s report on the Bill for the 2023 Act. A further reason for not changing the language in section 404 is that doing so would make it inconsistent with the 2023 Act.

Charles Felgate, Geldards LLP

Section 408(3), Planning Bill – location of requirement to have regard to national policies

2. Paragraph 4 of the response suggests that section 408(3) of the Planning Bill should be moved from the interpretation section of the Bill to the provisions about determining planning applications. However, as explained in the Drafters’ Notes, section 408(3) applies to *all* of the provisions of the Bill that impose a duty to have regard to the development plan and “any other relevant considerations”, not only those relating to applications. Moreover, section 408(3) merely puts beyond doubt that national planning policies and Welsh language considerations may be relevant considerations, so we consider that it is appropriate to include it in the interpretation section.

Section 7, Planning Bill – planning authority

3. Paragraph 5 of the response suggests that section 7 of the Bill, which defines a “planning authority”, should indicate that the Welsh Ministers may be a planning authority for the purposes of the provisions about applications and appeals. That would be incorrect. The references to a “planning authority” in the Bill restate existing references to local planning authorities, mineral planning authorities and hazardous substances authorities. They do not include the Welsh Ministers.

Section 75, Planning Bill – variation of an application that has been appealed

4. Paragraph 7 of the response argues for the removal of the provisions limiting the variation of an application that has been appealed. We agree that this would be a policy change that could not be made in a consolidation Bill under Standing Order 26C.2.

Inclusion of provisions about blight notices (Part 13 of the Planning Bill)

5. Paragraphs 8 to 11 of the response express the view that the provisions about blight notices should not be included in the Planning Bill because they form part of the law on compulsory purchase. The Law Commission recommended including the blight provisions in the Planning Bill (recommendation 6-5), and the government accepted the recommendation in principle. The question was considered carefully during the preparation of the Planning Bill, and on balance it was concluded that it was appropriate to regard the blight provisions as part of planning law and include them in the Bill. Although the provisions apply to things done under various other pieces of legislation, those things relate to the proposed development of land, and the provisions have always been included in the Town and Country Planning Acts.
6. Omitting the blight provisions from the Planning Bill would mean leaving them in the Town and Country Planning Act 1990 until they could be consolidated in another Bill. The 1990 Act would therefore continue to have some relevance to Wales, whereas the current approach taken in the Bill means that it will not. We do not think it would aid accessibility to amend the 1990 Act so that it applied only to England except for the Chapter about blight which would continue to apply to England and Wales.

Changes to terms including “completion notice” and “planning contravention notice”

7. Paragraphs 14 to 19 express the view that the changes to terminology in the Bill will undermine the objective of accessibility and may confuse practitioners working in both England and Wales. The new terms used in the Bill are all intended to give more accurate or simpler descriptions of the things to which they refer. In many cases, such as the names of various orders and notices, the Bill is adopting terms already used in practice. In the letter from the Counsel General and Minister for Delivery to the Committee dated 10 October, Annex 2 identified the changes that had been subject to consultation undertaken by the Law Commission or engagement with stakeholders undertaken by Welsh Government officials. Where there has been consultation or engagement, stakeholders have generally supported the changes.

Section 43(3), Planning Bill

8. Paragraphs 20 and 21 comment that section 43(3) of the Planning Bill is “very difficult to parse”. We agree that section 43(3) is a long sentence, but that reflects the nature of the proposition.

9. The comments that follow relate to the bullet points on pages 3 to 5 of the response.

Section 6, Planning Bill – operations that are not development

10. The response suggests that section 6(4) of the Planning Bill should be moved up to become section 6(3)(c). That would not work because section 6(3) is a substantive provision whereas section 6(4) is a signpost to a provision in another Act.

11. The response suggests that section 6(3)(a)(ii) should clarify whether it is referring to development requiring an environmental impact assessment (EIA). It is true that the purpose of the reference to works that “may have significant adverse effects on the environment” is to ensure that works subject to the EIA regime are not excluded from being development. However, section 6(3)(a) is not itself about EIAs, so we do not think it would be helpful to add a reference to them. Doing so would involve using terms defined in the EIA legislation and referring to the definitions of the terms in that legislation. But the definitions in the EIA legislation contain material that is not relevant in this context, and there is no need to engage with them in order to understand the effect of section 6(3)(a). The link to the EIA regime could instead be mentioned in guidance.

National Parks and joint local development plans

12. The response suggests that a National Park authority cannot be a party to a joint local development plan. That is not correct. Section 9 of the Planning Bill limits the power to establish joint planning boards in relation to National Parks, but joint LDPs are dealt with in sections 36 and 37. Under section 36, a National Park authority can agree with another planning authority to prepare a joint LDP, but cannot be directed to do so.

Section 10(2), Planning Bill – conflict between development plan policies

13. The response suggests clarifying that “adopted or approved” in section 10(2) of the Planning Bill is referring to the National Development Framework for Wales. That is not correct. The reference in section 10(2) to a plan being “adopted or approved” is referring to a strategic or local development plan being adopted by a resolution of the authority that prepared it under section 24, or approved by the Welsh Ministers under section 26(5) or 29(5). The reference to a plan being “published” is referring to the Welsh Ministers publishing the National Development Framework under section 14(6).

Section 24(2), Planning Bill – adoption of plan

14. The response suggests that section 24(2) of the Planning Bill needs amending to cover strategic development plans. However, section 24(2) already applies to those plans (see the definition of “plan” in section 20), and the “authority” to which it refers is the plan-making authority mentioned in section 24(1). That is the corporate joint committee in the case of a SDP (see the definition of “plan-making authority” in section 20).

Section 52, Planning Bill – pre-application consultation

15. The response suggests that section 52 should be amended to avoid the impression that it applies to all applications. It is already clear that it does not. Section 52(1) states that the section only applies to proposed applications for permission for development “of a description specified in regulations”. That description is specified in article 2B of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, which will continue to have effect as if made under section 52 of the Bill if it is enacted.
16. The response also says that section 52(8)(d) should clarify which consultees it is referring to. We do not think that is necessary. Section 52(5) already requires regulations to

impose a duty to consult and specify the persons to be consulted, and section 52(7) makes clear that section 52(8) is only about consultation under section 52.

Section 86, Planning Bill – combining applications

17. The response suggests that section 86 is a new provision that is not appropriate for a consolidation Bill. However, section 86 is not a new provision: it restates section 332 of the Town and Country Planning Act 1990, with minor drafting changes.

Section 113, Planning Bill – enforcement time limits

18. The response suggests that for clarity the last row of the table in section 113 should be amended to say that the breaches of planning control to which it refers include “any other change of use and any breach of condition”. However, the wording here is the same as that in section 171B(3) of the 1990 Act, and the definition of “breach of planning control” in section 112 of the Bill (restating section 171A) already makes clear what is covered. In addition, the proposed amendment would change the law in relation to material changes of use that are not development by virtue of section 6 of the Bill or do not require planning permission by virtue of section 43.
19. The response also asks whether the case law on concealed breaches of planning control should be codified. We do not think it should. The Law Commission considered this issue and recommended that it should be addressed in guidance rather than by codifying the case law in the Bill: see recommendation 12-3, which the Government accepted.

Sections 120(5) and 123(3), Planning Bill – temporary stop notices

20. The response suggests that there is a conflict between sections 120(5) and 123(3). We do not understand why that is suggested, and we are satisfied that there is no conflict.

Meaning of “public safety” in section 231(1)(b), Planning Bill

21. The response suggests that the Bill should state that “public safety” in section 231(1)(b) includes highway safety. We are not aware of any reason why the general reference to “public safety” would not include the safety of people on a highway, and we do not think it would be helpful to single out this aspect of public safety.

Section 126(4), Planning Bill – breach of condition notices

22. The response suggests raising the level of fine for failing to comply with a breach of condition notice (as the Law Commission had recommended in recommendation 12-25). We consider that raising the fine would amount to a substantive policy change that could not be made in a consolidation Bill under Standing Order 26C.2.

Sections 165 to 171, Planning Bill – planning obligations and community infrastructure levy

23. The response asks whether the “pooling restriction” has been removed. We understand that this is referring to regulation 123(3) of the Community Infrastructure Levy Regulations 2010, which has been revoked in England but continues to apply in Wales. Chapter 2 of Part 6 of the Planning Bill restates the powers under which the CIL

Regulations were made, but does not affect the CIL Regulations themselves, which will continue to have the same effect as they do now once the Bill comes into force. (There are two exceptions: regulations 4 and 122 are restated in the Bill so they will no longer be needed.) Therefore regulation 123(3) will continue to apply to Wales unless the Welsh Ministers revoke it, so any change will be a matter for regulations rather than the Bill.

Definition of “occupied”

24. The response suggests amending section 408 to include a definition of “occupied”. However, we are not aware of the meaning of “occupied” in planning legislation causing problems in practice. The courts have occasionally considered the meaning of “occupy” and “occupier” in the enforcement provisions, but they have held that whether a person is an occupier is a question of fact and degree to be determined in the circumstances of each case (see *Stevens v Bromley LBC* [1972] Ch 400; *Scarborough BC v Adams* (1983) 147 JP 449; *International Traders Ferry Ltd v Adur DC* [2004] 2 PLR 106). As such, the case law does not set out a more detailed test or definition that could be codified in legislation. Nor does the response from RTPI Cymru suggest what definition should be adopted or what issues it should address.

Awdurdod Parc Cenediaethol Bannau Brycheiniog / Bannau Brycheiniog National Park Authority

Issue 1: Change to effect of Section 4A of the Town and Country Planning Act 1990

25. The response claims that the Planning Bill changes the effect of section 4A of the Town and Country Planning Act 1990 and creates uncertainty about the role of a National Park authority as a planning authority. We do not agree that it does either of those things.
26. Section 7 of the Bill states clearly that a National Park authority is the planning authority for its National Park. The drafting follows the approach to defining a local planning authority that is already taken in section 78(3) of the Planning and Compulsory Purchase Act 2004, rather than the approach in section 4A of the 1990 Act.
27. The Bill omits most of section 4A of the 1990 Act because it is unnecessary in Wales. In most of England, there are two local planning authorities (the county and district planning authorities) and a mineral planning authority (which is the county planning authority). We think that section 4A provides that a National Park authority is the “sole local planning authority” for its Park and has the functions of “a planning authority of any description” to make clear that it takes the place of all of those other authorities. Under the Planning Bill, an area in Wales can only have one planning authority (normally the county or county borough council), so the approach taken in section 4A is unnecessary. There is no need to say any more than is said in section 7 of the Bill.
28. We do not understand why the response refers to a corporate joint committee’s function of preparing a strategic development plan under Part 6 of the 2004 Act. Section 4A of the 1990 Act is about the functions of planning authorities under the planning Acts. A CJC is not a “planning authority” because it is not referred to as a planning authority anywhere

in the existing legislation¹; and it is not a joint committee of the planning authorities in its area but a separate corporate entity. The 2004 Act is not one of the “planning Acts” because it is not included in the definition of “the planning Acts” in section 336(1) of the 1990 Act. Section 4A of the 1990 Act therefore has no application to CJs or to functions under the 2004 Act. Instead, Part 6 of the 2004 Act sets out which authorities exercise functions under that Part, and in particular confers the function of a preparing a SDP only on a CJ. Part 2 of the Planning Bill maintains that position.

Issue 2: Omission of Conservation of Habitats and Species Regulations 2017

29. The Welsh Government’s position on the inclusion of the Habitats Regulations in the consolidation is set out in the quotation included in the response.

Issue 3: Uncertainty about expiry of local development plans

30. The response claims that there is currently uncertainty about when local development plans expire, which the Planning Bill continues. It might also be suggesting that the Bill could cause plans to expire earlier than would otherwise have been the case. We do not agree that there is any uncertainty or that the Bill would change anything.
31. Section 12 of the Planning (Wales) Act 2015 amended section 62 of the Planning and Compulsory Purchase 2004 with effect from 4 January 2016. It inserted a new section 62(3B) requiring LDPs to specify the periods for which they would have effect. It did not apply retrospectively to LDPs that had already been adopted or require them to be amended. It also inserted section 62(9), which provides for LDPs to cease to have effect “on the expiry of the period specified under subsection (3B)”. It does not apply to any periods that had been specified in LDPs adopted before section 62(3B) came into force on 4 January 2016, because those periods were not specified “under subsection (3B)”.
32. Section 19(5) and (9) of the Planning Bill restate section 62(3B) and (9) of the 2004 Act in almost identical terms. In particular, section 19(9) provides for a plan to cease to have effect at the end of “the period specified under subsection (5)”. The reference to the period “specified under subsection (5)” will include a period that was specified under section 62(3B) when it was in force, but it will not include any period that had been specified in a plan adopted before section 62(3B) came into force. Section 35(2) and (4) of the Legislation (Wales) Act 2019 will ensure that periods specified under section 62(3B) continue to have effect as if specified under section 19(5) of the Planning Bill, and more generally that existing LDPs continue to have the same effect after the Planning Bill comes into force as they had before, so the position will be unchanged. Paragraph 2 of Schedule 5 to the Planning (Consequential Provisions) (Wales) Bill makes clear that the transitional and saving provisions in that Schedule apply in addition to section 35 of the 2019 Act and do not limit the operation of that section.

¹ Sections 60L and 60N of the 2004 Act do apply the procedural provisions about local planning authority surveys and local development plans to CJ surveys and strategic development plans. In order to make those provisions work correctly for CJ surveys and SDPs, sections 60L(3)(a) and 60N(4)(a) treat references to local planning authorities as if they were references to CJs. That does not have the effect of making a CJ a local planning authority for any purpose. Chapters 3 to 5 of Part 2 of the Planning Bill take a different drafting approach that does not rely on applying provisions about local planning authorities to CJs.

Levelling-up and Regeneration Act 2023

33. Nearly all of the changes to planning legislation made by LURA 2023 apply only to England, so they are not restated in the Planning Bill but affect the amendments that the Planning (Consequential Provisions) (Wales) Bill needs to make to existing legislation.
34. A few provisions of the Planning Bill are restating provisions that are to be inserted into the 1990 Act by LURA 2023 but that are not yet in force. Those provisions of the Planning Bill are to be ignored until the relevant provisions of LURA 2023 come into force: see paragraphs 9, 13 and 22 of Schedule 5 to the Consequential Provisions Bill.

Planning and Infrastructure Bill

35. We have taken the Planning and Infrastructure Bill into account in drafting our Bills. That Bill is mostly amending legislation about infrastructure that is not included in our consolidation, and where it amends the legislation that is being consolidated the amendments relate only to England. The P&I Bill mainly affects the consequential amendments that we need to make to existing legislation, and we will review whether any of those amendments need to change if the P&I Bill is passed.

The Hillside case

36. The Supreme Court's decision in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30 related to the scope of the principle that a planning permission ceases to authorise development if it becomes physically impossible to carry out that development due to the implementation of a conflicting planning permission relating to the same site. Any amendment relating to this issue would be intended to change the law, so it would not be within the scope of consolidation under Standing Order 26C.2.

Future UK planning reforms

37. The Planning Bill cannot take account of changes to legislation that might be included in future Bills to be introduced in the UK Parliament. It is most likely that any future UK Bill relating to planning would apply only to England. If consent were given for it to make changes applying to Wales, it would need to do so by amending the Planning Bill.