

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)**

### **Planning and Infrastructure Bill**

1. This legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru<sup>1</sup> if a UK Parliamentary Bill makes provision in relation to Wales which has regard to devolved matters.
2. The Planning and Infrastructure Bill (“the Bill”) was introduced in the UK Parliament, the House of Commons, on 11 March 2025. [I laid an LCM on 26 March 2025.](#)
3. The UK Government tabled 17 amendments on 23 April, and 22 amendments on 24 April for consideration at Commons Committee. The Committee is expected to report to the House by 22 May 2025.
4. Three of these amendments make provisions which have regard to devolved matters, as detailed in paragraphs 12 to 37 below.
5. The Bill as amended at Commons Committee Stage can be found at: [Planning and Infrastructure Bill - Parliamentary Bills - UK Parliament](#)

### **Policy Objectives**

6. The UK Government’s stated policy objectives for the Bill is to speed up and streamline the delivery of new homes and critical infrastructure, supporting delivery of the government’s Plan for Change milestones of building 1.5 million safe and decent homes in England and fast-tracking 150 planning decisions on major economic infrastructure projects by the end of this Parliament. It will also support delivery of the government’s Clean Power 2030 target by ensuring that clean energy projects are built as quickly as possible. To achieve this, the Bill seeks to:
  - a. Provide for a faster and more certain consenting process for critical infrastructure and strengthen the policy framework around National Policy Statements.
  - b. Deliver a more efficient and predictable system for energy infrastructure projects, including:
    - i. Reforms to update the electricity grid connection process;
    - ii. Establishing a new cap and floor scheme to support the deployment of long duration electricity storage;

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<sup>1</sup> Please note in accordance with Welsh Government policy we refer to the legislature in Wales as “Senedd Cymru” on first use and “the Senedd” thereafter unless the context stipulates otherwise.

- iii. Reforms to electricity infrastructure consenting in Scotland, to reduce system inefficiencies and insert elements of best practice;
  - iv. Establishing a bill discount scheme for those living closest to new electricity transmission infrastructure; and
  - v. Updating a process for offshore electricity transmission, by extending the generator commissioning clause period.
- c. Streamline and improve the efficiency of delivering transport infrastructure projects, including:
  - i. Changing the process of street works approval in order to accelerate the installation of electric vehicle public charge points;
  - ii. Various reforms to the Transport and Works Act 1992 and Highways Act 1980 to streamline processes and accelerate delivery of projects; and
  - iii. Improving cost recovery for Harbour Revision Orders.
- d. Introduce a more strategic approach to nature recovery in relation to development, enabling developers to fund restoration more efficiently through a new Nature Restoration Fund, whilst securing improved outcomes for the environment.
- e. Improve certainty and decision-making increasing the capacity of local planning authorities by enabling the cost recovery of planning fees.
- f. Unlock land and secure public value for large-scale investment through reforms to the compulsory purchase order process and compensation rules.
- g. Strengthen development corporation powers for infrastructure delivery, including transport, and clarify and update development corporation remits and objectives.
- h. Provide for the introduction of a strategic planning system for England.

## **Summary of the Bill**

- 7. A summary of the Bill was provided in the first LCM laid on 26 March 2025, which remains accurate.

## **Update on position since the publication of the first LCM**

- 8. Officials for the Welsh Government and UK Government have been in regular contact during the development of the Bill and engagement continues at Ministerial and official levels where necessary on three clauses that the first LCM raised concerns on, so to ensure that the provisions work for Wales.
- 9. There are also proposals in the Bill for a Nature Restoration Fund which is payable by developers. This is reliant on Natural England preparing an environmental delivery plan to address particular environmental

challenges including phosphate and nitrate nutrient neutrality requirements for developments. These powers are currently only applicable to England.

**Provisions tabled by the UK Government to the Bill for consideration at committee stage for which consent is required**

10. The following amendments have been assessed by the Welsh Government as requiring the legislative consent of the Senedd:

- Gov NC43 which adds a new clause – *“Changes to, and revocation of development consent orders”*
- Gov NC44(a), (b) and (e) which adds a new clause – *“Applications for development consent: removal of certain pre-application requirements”*
- Gov NC45 which adds a new clause – *“Applications for development consent: changes related to section (Applications for development consent: removal of certain pre-application requirements)”*

11. Following analysis of these new amendments, I consider that this supplementary LCM is required for the reason set out paragraphs 12 to 37 below.

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

12. New clause Gov NC44 was tabled on 24 April 2025 and omits a range of sections from the Planning Act 2008 (“the 2008 Act”).

13. In particular, the provision proposes to remove:

- (a) section 42 (duty to consult);
- (b) section 43 (local authorities for purposes of section 42(1)(b));
- (c) section 44 (categories for purposes of section 42(1)(d));
- (d) section 45 (timetable for consultation under section 42);
- (e) section 47 (duty to consult local community);
- (f) section 49 (duty to take account of responses to consultation and publicity).

14. These sections currently require a person who proposes to apply for development consent to consult particular people about the proposed application, including prescribed bodies, local authorities, the local community and persons with an interest in the land in question. Local authorities in Wales are specified on the face of the Bill as bodies that must be consulted where the development is within their area. The Welsh Ministers and other Devolved Welsh Authorities are also specified in Regulations made under section 42 of the 2008 Act.

15. In particular, the amendment proposes to remove the duty to consult certain people under section 42 (clause NC44(a)), including prescribed persons under section 42(1)(a) of the 2008 Act. This would include the

Welsh Ministers and Welsh public bodies such as Natural Resources Wales. The requirement under section 42(1)(b) to consult each local authority where land is within its area under section 43 (clause NC44(b)) is also removed. The local authority under section 43 includes the local authority where the development is located, which would include Welsh Local Authorities. The requirement for an applicant to prepare a statement setting out how the applicant proposes to consult each local authority within section 43(1) is also removed (clause NC44(e)). The Welsh Ministers and other devolved Welsh authorities are also specified in the Regulations made under section 42 of the 2008 Act. As such, the revocation of these sections will directly affect the functions of the Welsh Ministers and Devolved Welsh Authorities.

Gov NC45 – Applications for development consent: changes related to section (*Applications for development consent: removal of certain pre-application requirements*) - new drafting

16. New clause Gov NC45 was tabled on 24 April and makes changes related to the omission of pre-application consultation requirements in relation to Gov NC44.
17. The amendment at subsection (5) substitutes section 46 (duty to notify the Secretary of State of proposed application) of the 2008 Act. The proposed new section replaces the requirement to notify the Secretary of State of a proposed application with a requirement to notify the Secretary of State *and* each host local authority. A local authority is defined as being a “host local authority” if the land is in the authority’s area and in Wales a local authority will include a county council, or county borough council. As such, local authority’s will be provided certain information as specified in the proposed new section 1(C) to be inserted into the 2008 Act and also in Regulations. In addition, the requirement for the applicant to provide the Secretary of State with the information before commencing consultation under section 42 of the 2008 Act is omitted.
18. The effect of these amendments place a new function on the local planning authority who will receive the information specified.
19. The amendment at subsection (6) of Gov NC45 amends section 48 (duty to the publicise) of the 2008 Act. Subsection (1) of section 46 requires the applicant to publicise the proposed application. Subsection (2) provides that Regulations made for the purpose of subsection (1) must make provision for publicity to include a deadline for receipt by the applicant of responses to that publicity. The proposed amendment seeks to omit subsection (2) meaning that Regulations will no longer need to make provision for a date for responses to be received by the applicant.
20. In addition, section 50 (Guidance about pre-application procedure) of the 2008 Act is to be substituted with new provision titled “*Guidance about pre-application steps*”. Currently, applicants must have regard to any guidance issued by the Secretary of State in relation to any of the

sections in Part 5, Chapter 2 of the 2008 Act – Pre-Application Procedure. The proposed amendment replaces that with a requirement to have regard to any guidance issued by the Secretary of State to assist them with complying with section 48 (duty to publicise) and provides that the Secretary of State is to issue guidance setting out best practice in terms of steps that applicants might take before submitting any applications.

21. Furthermore, the amendment at subsection (10) of Gov NC45 amends the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572) as a consequence of amendment NC44 so to remove the requirement to provide certain information to consultees.
22. The provisions proposed by new clause Gov NC45 would confer, remove or modify the functions of Devolved Welsh Authorities. As such, I consider that the amendments will trigger the legislative consent motion process and will require the consent of the Senedd.

Amendment Gov NC43 - “Changes to, and revocation of development consent orders” (new drafting)

23. This amendment was tabled on 24 April 2025 and proposes to amend Schedule 6 of the 2008 Act, which relates to changes to, and revocation of, orders granting development consent.
24. The proposed amendment would omit paragraph 2 of Schedule 6 to the 2008 Act. The effect of this would be to repeal the procedure for making non-material changes to development consent orders (DCOs) granted under that Act.
25. Amendment Gov NC43 also makes consequential changes to Schedule 6 to the 2008 Act, in order to reflect the omission of paragraph 2. Subsection (4) of Gov NC43 amends paragraph (4) of Schedule 6 to:
  - Clarify that a development consent order continues in force if it is changed.
  - Specify the date on which an order making a change or revocation takes effect.
  - Place a requirement on the Welsh Ministers to publish an order, in a manner they consider appropriate, which makes a change to, or revokes, a development consent order.
26. Subsection (5) of Gov NC43 makes a consequential change to omit subsection (5) of section 118 of the 2008 Act, which relates to legal challenges. It also amends subsection (6) (b) of that section so the date for filing a claim form is linked to the date the order is published.
27. Subsection (6) of Gov NC43 makes consequential amendments to other legislation, including paragraph 8(3)(b)(i) of Schedule 7 to the Wales Act 2017 (“the 2017 Act”). The 2017 Act devolved consenting functions for

certain electricity generating stations to the Welsh Ministers. These projects were previously NSIPs and were granted DCOs by the Secretary of State. Schedule 7 to the 2017 Act makes transitional provision for the Welsh Ministers to deal with any changes to DCOs that would now be the responsibility of the Welsh Ministers (legacy DCOs). The process for making any changes is set out in the 2008 Act, as modified by paragraph 8 of Schedule 7 to the 2017 Act.

28. Gov NC43(6)(d) amends Schedule 7 to the 2017 Act as a consequence of these changes and the omission of paragraph 2 of the Schedule 6 to the 2008 Act.
29. Although the function of deciding DCOs is reserved, the amendments proposed by amendment Gov NC43 would confer, remove or modify the functions of the Welsh Ministers in deciding any legacy DCO's in non-devolved areas. As such, I consider that the amendments will trigger the legislative consent motion process and require the consent of the Senedd.

### **UK Government view on the need for consent**

30. Mathew Pennycook MP, Minister of State for Housing and Planning, wrote to me on 2 May 2025 to advise of the UK Government's view on the need for consent of the Senedd in relation to the additional measures added to Part 1 of the Bill. The UK Government consider that, with the exception of Gov NC43, the provisions relate to reserved matters and therefore do not engage the legislative consent process.
31. However, as detailed in the paragraphs above, I believe the stronger argument is that amendments Gov NC43, Gov NC44 and Gov NC45 make provision that impact of the functions of Devolved Welsh Authorities and therefore require a legislative consent memorandum.

### **Reasons for making these provisions for Wales in the Planning and Infrastructure Bill**

#### Gov NC44 - "Applications for development consent: removal of certain pre-application requirements" - new clause

32. Although these amendments are not within the Senedd's legislative competence, the provisions modify the functions of Devolved Welsh Authorities through the removal of the pre-application consultation requirement currently set out in a range of sections of the 2008 Act. Those sections currently require a person who proposes to apply for development consent to consult particular people about the proposed application, including prescribed bodies, local authorities, the local community and persons with an interest in the land in question.

33. The revocation of sections 42, 43 and 47 (NC44(a), (b) and (e)) will directly affect the functions of the Welsh Ministers and Welsh Devolved Authorities, and therefore the proposed amendments fall within the scope of Standing Order 29.

Gov NC45 – “Applications for development consent: changes related to section (*Applications for development consent: removal of certain pre-application requirements*)” new clause

34. Although these amendments are not within the Senedd’s legislative competence, again they modify the functions of Devolved Welsh Authorities as a result of the removal of the pre-application consultation requirement in the 2008 Act by inserting a new requirement on applicants to notify the host local planning authority, which in Wales will include a county council or county borough council, of a proposed application for development consent. As these amendments affect the functions of Devolved Welsh Authorities the amendments fall within the scope of Standing Order 29.
35. New clause Gov NC45 replaces the statutory requirements for pre-application engagement with a similar duty covered by guidance which must be issued by the Secretary of State. Generally, I consider early, meaningful and constructive engagement leads to high-quality applications. In light of these proposed amendments, I will be seeking reassurance from the UK Government that the NSIP regime will still function on the basis of a front-loaded approach with a focus on high-quality early, meaningful and constructive engagement and consultation and that this will be reflected in the guidance that is issued.

Gov NC43 - “*Changes to, and revocation of development consent orders*” – new clause

36. Although this amendment is not within the Senedd’s legislative competence, the proposed amendments modify the functions of the Welsh Ministers in their capacity as decision maker regarding changes to DCOs which relate to devolved energy generating stations. Therefore, I consider that the amendment falls within the scope of Standing Order 29.
37. These amendments could affect a small number of projects in Wales, however, as the proposal provide a simplified process for making changes to DCOs the provisions will provide potential benefits for stakeholders. This change would align with our overall approach to providing a modern consenting process for infrastructure.

### **Financial implications**

38. The financial assessment of the Bill concludes that ‘over the ten year appraisal period, in present values (2025 prices, 2026 base year), the total benefits from the Bill are estimated at £5.2 billion, while the total

costs are estimated at £2.0 billion. This implies an overall positive impact on society equivalent to £3.2 billion’.

## **Conclusion**

39. It is my view that it is appropriate to deal with these provisions in this UK Bill.
40. In respect of new clause Gov NC44 and Gov NC45, it is appropriate to deal with these in a UK Bill as this relates to the UK consenting process for large scale infrastructure. This supplementary LCM is laid as the amendments confer, remove or modify the functions of Welsh public bodies in that process and I have written to the UK Government to understand the practical effects of the changes on both our bodies and the public. I await a response from the UK Government reassuring me that the associated guidance encourages a frontloaded approach before I can make a recommendation on consent in relation to clauses Gov NC44 and Gov NC45.
41. For new clause Gov NC43, the effect of the amendment is to confer, remove or modify the functions of the Welsh Ministers in their capacity as decision maker regarding changes to DCOs which relate to devolved energy generating stations. As these consents were granted under the 2008 Act the process is reserved to the UK Government to make the amendments. Further, making amendments with a UK wide approach is appropriate and can only be done in a UK Bill. At this time, I recommend that the Senedd supports and gives its consent for Gov NC43.

**Rebecca Evans MS**  
**Cabinet Secretary for Economy, Energy and Planning**  
**15 May 2025**