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Llyr Gruffydd MS
Chair, Climate Change, Environment and Infrastructure Committee
Senedd Cymru
Caerdydd
CF99 1NA

23 May 2025

Dear Chair and members of the Committee,

Legislative Consent Motion: Planning and Infrastructure Bill

We write with regard to the Planning and Infrastructure Bill, particularly in relation to the Legislative Consent Motion (LCM) and Supplementary LCM currently under consideration by the Committee.

The RSPB is the largest nature conservation charity in Europe and operates within the planning systems of all four countries of the UK. We also have extensive experience of engaging with Nationally Significant Infrastructure Project (NSIP) Development Consent Order (DCO) proposals. This places us in a strong position in a Wales context to consider the UK Government proposals to accelerate the consenting of major infrastructure development.

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Noddwr/Patron: His Majesty The King **Llywydd/President:** Dr Amir Khan **Cyfarwyddwr, RSPB Cymru/Director, RSPB Cymru:** Alun Prichard.
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Planning and Infrastructure Bill – Impacts on Wales

We are concerned that the Planning and Infrastructure Bill will impose a consenting scheme on Wales for the largest and most challenging infrastructure projects that is less rigorous than that which is in place for Developments of National Significance (to be superseded by the Infrastructure Wales Act (IWA)). These proposals are more impactful due to their scale and type and not in the control of Welsh policy makers, legislators and decision makers. This raises significant concern that the Welsh planning system – which is overwhelmingly devolved bar a few exceptions – will be undermined by significant and potentially damaging development, with no recourse for Welsh Ministers.

The March 2025 Memorandum sets out reasons for making provisions for Wales in the Planning and Infrastructure Bill, stating in Paragraphs 62 and 63 Nationally Significant Infrastructure Projects (NSIPs) that:

"I broadly agree that these clauses do not trigger the legislative consent motion process. I consider that clause 4(3) to (5) do trigger this process as it would affect the function of devolved Welsh authorities. The participation of public authorities is critical to the determination of largescale projects. Welsh and UK bodies participate in the Welsh consenting process, currently Developments of National Significance and the future process under the Infrastructure (Wales) Act 2024. These processes place a duty on public bodies to provide a substantive response when they are consulted.

Welsh bodies already participate in the UK Government NSIP process, and these clauses are similar to that found in the Welsh system. I consider these clauses, which introduce a 'duty to have regard to guidance', will help ensure Welsh public authorities engage and provide expert advice in a meaningful and timely manner. This will help shape development and expediate decision making, providing certainty on major development that affects Wales"

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We agree with the Welsh Government (WG) that these clauses are relevant to Wales and trigger the LCM process. However, we are concerned that the changes proposed will result in less rigour in determining proposals that are by definition larger and more impactful than those captured by Welsh legislation. For example, it is proposed that a more subjective approach is taken to consultation requirements, with the requirement in legislation to consult statutory stakeholders removed, to be replaced by as yet unpublished guidance. This is at odds with the robust approach required for DNS proposals and future applications for Infrastructure Consent under the IWA. Full analysis is set out below.

NSIP Pre-application requirements

We consider that the proposed UK Government amendment to secure revisions to NSIP pre-application requirements will also impose a less rigorous consenting system on Wales than that applied to applications in the remit of Welsh decision makers. The amendment seeks to remove the requirement in legislation to consult statutory stakeholders prior to the submission validation by the Planning Inspectorate (PINS) of NSIP applications, and instead to make this subject to statutory guidance.

It is proposed that the subsequent guidance will recommend that developers consult with relevant parties, allowing a 'proportionate' approach to be taken. PINS will then assess the pre-application consultation and determine whether it is adequate at the validation stage. This will allow developers more flexibility in who they choose to consult, particularly for re-consultation on any changes made. UK Government claims this change will cut the pre-application stage from two years to one. There are a number of worrying implications associated with this amendment, including:

- No guidance currently exists allowing PINS to make its judgement, with no proposed timeline.

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- There is nothing in the Bill that requires guidance to ensure delivery of better-quality information and applications as well as resolution of conflicts prior to submission.
- This amendment could be counterproductive in terms of its principal aim of accelerating timescales. Best practice shows that where thorough pre-application engagement and conflict resolution has been undertaken, the better the quality of applications which follow and proceed more swiftly through the remainder of the process. There is a real risk that this pressure on pre-application timescales, combined with flexibility on consulting requirements, will result in valid and critical issues not being identified until examination stage, thus creating significant delays later in the process.

Further, the rhetoric used by UK Government is deeply concerning, with the Ministry of Housing, Communities and Local Government (MHCLG) on 23 April 2025¹ referring to vital statutory consultation requirements as “burdensome”. Whilst we do not object to aspirations for quicker processes, this must not come at the expense of communities and public bodies’ ability to thoroughly engage with large projects that directly impact our places. The pre-application stage can create a smoother process overall through early identification and addressing of issues, whilst ensuring proper consideration is given to nature and other important matters.

The Government’s own advisor, the OEP, says environmental rules will be weakened and nature and neighbourhoods put at risk if this Bill becomes law. It also goes against Government evidence showing nature is *not* a blocker to development, with only 1% of planning challenges based on environmental concerns.

¹ <https://www.gov.uk/government/news/planning-reforms-to-slash-a-year-off-infrastructure-delivery>

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The UK approach is in stark contrast to the DNS system in Wales. DNS Procedural guidance sets out strong emphasis on a fully front loaded and comprehensive pre-application process to ensure any potential issues are identified and overcome as soon as possible. Supporting guidance² confirms that post-submission amendments are restricted, and sets out a clear, prescribed list of consultees that must be engaged with. NSIP proposals delivered in the context of the proposed UK Bill would take an opposite approach, essentially rushing through pre-application with incomplete consultation, ending up with significant issues at post-submission stage. Given the UK Government's statements about 'bat tunnels' and 'blockers', this seems a perverse approach, as issues identified late in the process will often need costly and time-consuming engineering solutions, whereas strong early engagement could ensure avoidance of sensitive locations in the first place.

As set out above, the IWA will replace the DNS regime in due course. It will set out in regulations³ requirements on consultation, and Welsh Government consulted on this in July 2024. RSPB Cymru made representations setting out our position, which is that subordinate legislation and accompanying guidance should also set a clear and high bar for the standard of pre-application submissions and their assessment in order to identify and address key issues to avoid delays further down the line.

Further, the development industry itself⁴ is supportive of principles set out in the current DNS process (which establishes a prescribed minimum pre-application requirement), with an emphasis on more rigorous requirements for larger, more complex proposals. Again, the emerging UK Bill's more selective and subjective approach risks de-emphasising early engagement on the largest and most

² <https://www.gov.wales/sites/default/files/publications/2019-07/developments-of-national-significance-guidance-the-pre-application-stage.pdf>

³ <https://www.legislation.gov.uk/asc/2024/3/part/3/crossheading/preapplication-procedure/enacted>

⁴ <https://solarenergyuk.org/resource/infrastructure-wales-bill-re-application/>

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complex projects in Wales, which could lead to significant delays at examination stage.

The Nature Emergency

Whilst we acknowledge that Part 3 of the Bill is for England only, we wish to stress that we are concerned at the policy direction it sets. Easing the regulatory requirements in England could lead to pressure in Wales and the rest of the UK for a 'race to the bottom'.

We are particularly concerned about the implications of Part 3 for Wales' cross-border protected areas with England. Despite Part 3 being for England only, the environmental damage could spill over into Wales, and we are concerned at Clause 49 stating that Environmental Delivery Plans (EDPs) can include "*waters adjacent to England*". The regression in English environmental regulations will harm habitats and species that extend into Welsh territory. These effects will be most visible in rivers on the Wales-England border, including the Dee, Severn and Wye which are all vitally important ecosystems for birds and fish. Spillover effects will also have direct impacts on cross-border SPAs, SACs, SSSIs and NNRs.

In addition, Schedule 4 of the Bill proposes enabling amendments to environmental regulations including the Habitats Regulations, aligned with Part 3 provisions, and intended to enable the delivery of EDPs in England. However, the Planning and Infrastructure Bill Explanatory Notes⁵ explicitly states in Paragraph 855 that the "*territorial extent of this Schedule is England and Wales*". Part 3 of the Bill does not cover Wales, and we urge the Committee to seek urgent clarification on this point.

⁵ <https://publications.parliament.uk/pa/bills/cbill/59-01/0196/en/240196en.pdf>

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We are not alone in our concerns around Part 3⁶, with highly respected economists, former government advisers and ecologists issuing an open letter to MPs⁷ where they echo RSPB calls for a key section of the Bill to be changed substantially to avoid a scenario that creates a 'licence to kill nature'.

The group – including Prof Sir Partha Dasgupta and Prof Sir John Lawton - highlights how Part Three of the Bill as currently proposed allows developers to 'buy out' of their legal obligations to nature, and in doing so, dismantles key safeguards that have protected nature for decades, potentially allowing them to 'pay "cash to trash" wildlife and the environment' by instead paying into a Nature Restoration Fund which may or may not deliver some benefits for nature at some point in the future.

Whatever it does, it will certainly never be able to make-up for the destruction of any habitats and places that are deemed irreplaceable, such as ancient woodland. The RSPB has also been highlighting the sheer number of proposals in the Bill which would weaken existing environmental protections and we are campaigning for changes to the Bill that genuinely could make things better for people, nature and the economy. We're deeply concerned that in disapplying the most important nature protections, and removing core principles such as avoiding harm to nature in the first place (and only mitigating impact and compensation for losses as a last resort), the Bill risks moving us even further away from nature's recovery. This is short sighted – as the economy and wider well-being are dependent on a healthy natural environment – and at odds with the commitment of the Welsh Government and the Senedd to tackle the nature emergency.

⁶ <https://www.theguardian.com/politics/2025/may/22/wildlife-charities-urge-labour-to-scrap-licence-to-kill-nature-in-planning-bill>

⁷ <https://www.rskwilding.com/wp-content/uploads/2025/04/250424-letter-to-mps-from-economists-and-ecology-experts-planning-bill-nature-restoration-levy-a-licence-to-kill-nature.docx-1.pdf>

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In summary, RSPB Cymru believes that the Planning and Infrastructure Bill as currently worded has both direct and indirect negative implications for nature in Wales, contrary to the aims of Welsh legislation and policy.

Yours sincerely,



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