

Julie James MS

Counsel General and Minister for Delivery

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



## 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.