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Welsh Government

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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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,

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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.

CLA Cymru

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 are 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.

RTPI Cymru

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 legislation[1]; 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 CJCs 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.

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 CJC surveys and strategic development plans. In order to make those provisions work correctly for CJC surveys and SDPs, sections 60L(3)(a) and 60N(4)(a) treat references to local planning authorities as if they were references to CJCs. That does not have the effect of making a CJC 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 CJCs.

Sara Hanrahan, Blake Morgan LLP

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.