

**PCB07 Awdurdod Parc Cenedlaethol Bannau Brycheiniog | Bannau
Brycheiniog National Park Authority**

Senedd Cymru | Welsh Parliament

**Y Pwyllgor Deddfwriaeth Cyfiawnder a'r Cyfansoddiad | Legislation, Justice
and Constitution Committee**

**Gwaith craffu ar Filiau Cydgrynhoi Llywodraeth Cymru ym maes cynllunio |
Scrutiny of the Welsh Government's planning Consolidation Bills**

Ymateb gan: Awdurdod Parc Cenedlaethol Bannau Brycheiniog | Evidence from:
Bannau Brycheiniog National Park Authority

In accordance with section 11A (2) of the National Parks and Access to the Countryside Act 1949, we remind you that any relevant Authority shall have regard to National Park purposes when performing any functions in relation to, or so as to affect, land in a National Park. Relevant Authorities include public bodies, government departments, local authorities and statutory undertakers.

The National Park Authority has a keen concern that the law is consolidated clearly and consistently so that we may operate efficiently and effectively towards the National Park purposes; a sound expression of the legal basis is a minimum requirement. We do not consider it a good use of Authority time or resource to have to seek legal opinion on what is "Vires" and "Ultra Vires" and neither should this be open to various interpretations following Royal Assent.

The first issue we raise is of fundamental importance to our Authority; issues 2 & 3 are of wider importance and are relevant across Wales.

Should you wish for further clarification on any of the points raised to assist with the Committee's scrutiny of the proposed Bills, please do not hesitate to get in contact.

Issue 1: The Bill fundamentally changes the role of the National Park Authority as sole local planning authority for the area of the Park.

Relevant considerations:

Whether the Bills correctly consolidate the enactments or changes their substantive legal effect only to the extent allowed by Standing Order 26C.2;

Whether the Bills consolidate the law clearly and consistently.

We consider the Bill fundamentally changes the legal effect of Section 4A of the Town and Country Planning Act 1990 and in this respect does not consolidate the law clearly and consistently.

4A National Parks with National Park authorities.

(1) Where a National Park authority has been established for any area, this section, shall apply, as from such time as may be specified for the purposes of this section in the order establishing that authority, in relation to the Park for which it is the authority.

*(2) Subject to subsections (4) and (5) below, the National Park authority for the Park **shall be the sole local planning authority for the area of the Park** and, accordingly—*

*(a) functions conferred by or under the planning Acts **on a planning authority of any description** (including the functions of a mineral planning authority under those Acts and under the Planning and Compensation Act 1991) **shall, in relation to the Park, be functions of the National Park authority,** and not of any other authority; and*

*(b) **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.***

(Bold and underlined emphasis added)

Can you find such a clear expression of our Authority's status in the Bill?

As worded, the proposed consolidation introduces huge uncertainty to the role of national park authorities. We wonder whether the Bill is drafted to resolve the

current contradiction in legislation introduced by the Planning (Wales) Act (2015) and the Local Government and Elections (Wales) Act 2021?

We cannot be clearer - consolidation is not an appropriate mechanism to change the role of national park authorities status as **the sole local planning authority for the area of the Park.**

Having raised this with the team drafting the Bill during the consultation exercise, Welsh Government officials have argued that the function conferred in PCPA 2004 s60M (1) 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 TCPA s4A (2)(a)].

This despite the title of Chapter 3 of the Bill being **Strategic and local planning: main functions of authorities** and CJs ultimately being responsible for adopting of strategic development plans.

Put another way, the Welsh Government believe that a public body (i.e., the CJC) preparing a statutory part of the development plan in Wales is **not** a planning authority of any description and that development plan preparation (SDP) is **not** a function conferred on or under the Planning Acts.

That's really difficult to follow and reconcile and doesn't appear to present the existing law that applies in Wales in a modern and accessible form.

It is not appropriate to cause such uncertainty over the role of national park authorities planning function through a consolidating Act. Section 4A of the Town and Country Planning Act 1990 should be retained in the consolidated law.

Issue 2: Omission from consolidation of relevant provisions from the Conservation of Habitats and Species Regulations 2017

Relevant considerations:

Whether the scope of the consolidation is appropriate;

Whether the relevant enactments have been included within the consolidation;

We consider the scope of the consolidation is not appropriate because it omits from consolidation relevant enactments within The Conservation of Habitats and Species Regulations 2017.

s41 of The Conservation of Habitats and Species Regulations 2017 provides key definition of principal relevance to the nature and scope of development planning policy. This has been omitted from the Bill.

41.—(1) For the purposes of the relevant provisions, 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.

We respectfully disagree with the following position of the Welsh Government; which misconstrues the significance of the Habitats Regulations, relating them primarily to environmental assessment activity. 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 the section “**Nature conservation policy in planning contexts**”.

The Welsh Government Position is as follows:

Habitats Regulations

We acknowledge that 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. Environmental impact assessments including Habitats Regulations was also considered as part of the work by the Law Commission on the scope of the Bill. It is also 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.

There will be a need for subordinate legislation to amend all exiting subordinate legislation, such as the 2017 Habitat Regulations, to ensure they correctly interacts and applies to the new primary legislation being delivered through the Bill in order to ensure they continue to work and retain their current legal effect. Subject to the Senedd passing the Bill, these regulations will be produced to support the implementation of the Bill.

Issue 3: Retrospective application of: *the “local development plan” (“cynllun datblygu lleol”) ceases to be a local development plan at the end of the period for which it specifies it is to have effect.*

Relevant considerations:

Whether the Bills correctly consolidate the enactments or changes their substantive legal effect only to the extent allowed by Standing Order 26C.2;

Whether the Bills consolidate the law clearly and consistently.

We consider there remains a lack of clarity about the retrospective application of provisions in the Bill which were introduced by the Planning (Wales) Act 2015.

Within the consolidated bill (or existing law) we can't actually find anything which supports the position (see link below) that amendments to the 2004 Planning and Compulsory Purchase Act applied only from commencement of the Planning Wales Act 2015 and do not apply retrospectively: www.gov.wales/local-development-plan-ldp-end-dates-letter-local-authorities.html

This lack of clarity appears to have rolled forward into the consolidation bill (i.e. there appears nothing on the face of the Bill to indicate that it doesn't apply retrospectively).

When the consolidated act comes into force on receiving Royal Assent would a “local development plan” (“cynllun datblygu lleol”) have ceased to be a local development plan at the end of the period for which it specifies it is to have effect?

This is an important matter which applies to all 25 local planning authorities.

Ends.

08 October 2025.

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