**National Assembly for Wales**
Constitutional and Legislative Affairs Committee

# Report on the Planning (Wales) Bill

January 2015

Cynulliad Cenedlaethol Cymru

National Assembly for Wales

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# Constitutional and Legislative Affairs Committee

The Committee was established on 15 June 2011 with a remit to carry out the functions of the responsible committee set out in in Standing Orders 21.2 and 21.3 and to consider any other legislative matter, other than the functions required by Standing Order 26, referred to it by the Business

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**Current Committee membership:**

**David Melding (Chair)**
Welsh Conservatives
South Wales Central

**Alun Davies**
Welsh Labour
Blaenau Gwent

**Suzy Davies**
Welsh Conservatives
South Wales West

**William Powell**
Welsh Liberal Democrats
Mid and West Wales

**Simon Thomas**
Plaid Cymru
Mid and West Wales

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**Conclusion 1.** We believe that it would have been helpful for the Explanatory Memorandum to have outlined in detail how the Bill has taken account of human rights issues given their relevance to matters of planning. (Page **13**)

**Conclusion 2.** We believe that more detail should be placed on the face of Bill, particularly in relation to significant policy matters. (Page 20)

**Recommendation 1.** We recommend that the Minister should table an amendment to the Bill applying the affirmative procedure to the making of regulations under section 60D(1) of the *Planning and Compulsory Purchase Act 2004*. (Page 25)

**Recommendation 2.** We recommend that if the Minister does not intend to include on the face of the Bill those developments which are to be subject to pre-application consultation (and permit them to be amended by affirmative instrument), he should table an amendment to the Bill to apply the affirmative procedure to the making of an order under section 61Z(1)(b) of the *Town and Country Planning Act 1990*. (Page 27)

**Recommendation 3.** We recommend that the Minister should table amendments to the Bill to:

- include on its face categories of developments to be classified as nationally significant; and
- allow such categories to be amended by subordinate legislation subject to the affirmative procedure. (Page 30)

**Recommendation 4.** We recommend that the Minister should table amendments to the Bill to:

- include on its face a list of all matters which could presently be categorised as secondary consents; and
- allow such information to be amended by subordinate legislation subject to the affirmative procedure. (Page 33)

**Recommendation 5.** We recommend that the Minister explains and clarifies during the Stage 1 debate on this Bill, the purpose of section 20 and how it will operate in practice, including:

- the criteria to be used in determining whether a local authority is underperforming;
- the types of developments to which it will apply;
- what assessment he has made of whether a provision similar to that contained in section 62B of the *Town and Country Planning Act 1990* would be appropriate. (Page 35)

**Recommendation 6.** We recommend that before section 44 of the Bill is commenced, guidance in relation to the award of costs incurred in planning proceedings is revised and published. (Page 37)

**Recommendation 7.** We recommend that the Minister should table an amendment to section 53(1) of the Bill to delete the words "as they consider appropriate in connection with" and insert in their place "as they consider necessary for the purpose of, or in consequence of giving full effect to any provisions of". (Page 38)

**Recommendation 8.** We recommend that the Minister should table an amendment to the Bill to apply the negative procedure to orders made in accordance with section 54(5)(b)(ii) of the Bill. (Page 38)

**Recommendation 9.** We recommend that the Minister confirms categorically during the Stage 1 debate that the Queen's or Prince's consent is not required in respect of the Bill and that in so doing, he sets out the reasons for his view, taking account of the views we express at paragraphs 130 to 134 of this report. (Page 40)

# 1. Introduction

### *The Committee's remit*

1. The remit of the Constitutional and Legislative Affairs Committee ("the Committee") is to carry out the functions of the responsible committee set out in Standing Order 21 and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or the Welsh Ministers.

2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.

3. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

### *Introduction and consideration of the Bill*

4. On 6 October 2014, the Minister for Natural Resources, Carl Sargeant AM ("the Minister") introduced the Planning (Wales) Bill ("the Bill") and accompanying Explanatory Memorandum.[1]

5. The Assembly's Business Committee referred the Bill to the Environment and Sustainability Committee for consideration, setting a deadline of 30 January 2015 to report on the general principles.

6. On 7 November 2014, the Minister to wrote to the Environment and Sustainability Committee providing a Keeling Schedule[2] for the Bill and Statements of Policy Intent for subordinate legislation arising from the Bill.[3]

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[1] Welsh Government, *Planning (Wales) Bill, Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory Notes*, October 2014

[2] Keeling Schedules are used to show how the provisions in a Bill amend the text of an earlier Act by reproducing extracts of the Act with the proposed changes to the text tracked.

[3] Welsh Government, *Planning (Wales) Bill, Statements of Policy Intent*, November 2014

7. We considered the Bill at our meeting on 10 November 2014, taking evidence from the Minister. In response to our subsequent request for further information from the Committee,[4] the Minister provided it by letter on 2 December 2014.[5]

8. On 9 January 2015, the Minister copied to us a letter he wrote to the Chair of the Environment and Sustainability Committee providing further information about how the planning system will accommodate the changes being introduced by the Well-being of Future Generations (Wales) Bill.[6]

[4] Letter to Carl Sargeant AM, Minister for Natural Resources, *Planning (Wales) Bill,* 21 November 2014
[5] Letter from Carl Sargeant AM, Minister for Natural Resources, *Planning (Wales) Bill*, 2 December 2014
[6] Letter from Carl Sargeant AM, Minister for Natural Resources to Alun Ffred Jones AM, Chair Environment and Sustainability Committee, *Planning (Wales) Bill*, 9 January 2015

# 2. Background

### *Purpose of the Bill*

9. The Explanatory Memorandum describes the Bill as:

> "… a set of provisions … that will provide a modern legislative framework for the operation of the planning system. It puts in place delivery structures, processes and procedures, to make the planning system fit for the 21st Century. Taken together the provisions will allow the planning system to support the delivery of national, local and community aspirations by creating sustainable places where citizens have improved access to quality homes, jobs and built and natural environments and supports the use of the Welsh language."[7]

10. It also states that it will introduce changes that:

- provide a modern delivery framework for the preparation of development plans and planning decisions, including allowing the Welsh Ministers to decide a limited number of planning applications in defined circumstances;
- reaffirm the Welsh Government's commitment to the plan led system;
- address identified deficiencies at national and strategic levels by replacing the Wales Spatial Plan (WSP) with a National Development Framework (NDF) and introducing provisions which would allow the preparation of Strategic Development Plans (SDPs) where needed;
- ensure that Local Development Plans (LDPs) are delivered and reviewed regularly so that they remain relevant to planning decisions;
- improve the operation of the development management system so it complements the implementation of Local Development Plans, including the introduction of provisions to promote greater consistency and availability of pre-application advice;
- further enhance engagement by making it easier for citizens to influence the future of their communities, through the

[7] Explanatory Memorandum, paragraph 1.1

introduction of statutory pre-application consultation for significant planning applications;

- overhaul the arrangements under which planning decisions are made including introducing provisions which would allow for the standardisation of planning committee arrangements and procedures and delegation to officers across Wales;
- modernise the planning enforcement system to ensure that breaches of planning control can be remedied efficiently;
- streamline the planning appeal process.[8]

[8] Explanatory Memorandum, paragraph 1.2

# 3. Legislative Competence

### *Explanatory Memorandum*

11. The Explanatory Memorandum indicates that the following subjects provide the Assembly with the legislative competence to make the provisions contained in the Planning (Wales) Bill:

- town and country planning (paragraph 18);
- local government (paragraph 12);
- environment (paragraph 6);
- public administration (paragraph 14).[9]

12. A Bill would not be within the legislative competence of the Assembly if it was incompatible with the European Convention on Human Rights and could not become law (see section 108(6)(c) of the *Government of Wales Act 2006*).

13. Various provisions of the Bill engage human rights, in particular Article 6 (right to a fair trial), Article 1 Protocol 1 (peaceful enjoyment of possessions) and Article 8 (right to respect for private and family life).

### *Evidence from the Minister*

14. The Minister told us that he believes that the Bill is within competence,[10] adding:

> "We have received no correspondence to say otherwise or any conversations to the contrary. We have been in discussion with the UK Government and I have corresponded … in relation to consents. Again, nothing has been flagged up to suggest otherwise."[11]

15. In correspondence with the Minister, we raised matters relating to human rights.[12] He told us:

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[9] Explanatory Memorandum, paragraphs 2.3 and 2.4
[10] Constitutional and Legislative Affairs ("CLA") Committee, RoP paragraph [11], 10 November 2014
[11] CLA Committee, RoP paragraph [11], 10 November 2014
[12] Letter to Carl Sargeant AM, Minister for Natural Resources, *Planning (Wales) Bill*, 21 November 2014

> "Human rights issues in respect of the Bill have been considered as part of the overall legal advice provided to Ministers. All legal advice to Ministers is protected by Legal Professional Privilege.
>
> The Welsh Government considers the proposals contained in the Bill are compatible with the Convention Rights given that the planning system by its very nature balances the rights of the individual and the interests of the wider community."[13]

***Our view***

16. We note that no issues have been raised with the Minister regarding the Assembly's ability to make this legislation under Schedule 7 to the *Government of Wales Act 2006*.

17. As regards Human Rights, the test for compatibility in relation to Article 8 and Article 1 Protocol 1 involves a consideration of whether the provisions are enshrined in law, pursue a legitimate aim and are proportionate.

18. We note that there is no reference to proportionality within the Explanatory Memorandum and very little reference to Convention Rights at all. We consider that matters relating to human rights are particularly relevant to planning law.

19. The Supreme Court's judgment in the Agricultural Sector (Wales) Bill emphasised the importance of Assembly proceedings and documents generated by the Assembly or the Welsh Government when considering competence. Although the Court's judgment in the Asbestos (Recovery of Medical Costs) (Wales) Bill is awaited, the judges in that case made obiter remarks which concerned the Assembly's consideration of the public interest test in relation to Article 1 of the First Protocol during its proceedings.

20. Whilst we accept that legal advice between the Minister and his officials is subject to legal professional privilege, we can see no reason why in the case of this Bill, the Explanatory Memorandum could not have provided information in relation to how the Bill engages various human rights and the basis upon which the Minister considers any interference can be justified. Such an approach would have assisted

[13] Letter from Carl Sargeant AM, Minister for Natural Resources, *Planning (Wales) Bill*, 2 December 2014

both the public when responding to consultation on the Bill and the Committees responsible for scrutinising it. More generally, we note that the approach the Welsh Government takes to providing information in Explanatory Memorandums about human rights appears to vary with each Bill.

**Conclusion 1: we believe that it would have been helpful for the Explanatory Memorandum to have outlined in detail how the Bill has taken account of human rights issues given their relevance to matters of planning.**

# 4. General observations

### *Introduction*

21. The Bill has 55 sections, in eight parts, and seven schedules.

22. The Explanatory Memorandum provides an overview of the planning system in Wales, stating that:

> "The national framework for the operation of the planning system consists of three integrated and complementary parts:
>
> - primary legislation;
> - subordinate legislation;
> - policy and guidance.
>
> The main pieces of primary legislation as they relate to planning in Wales are:
>
> - The Town and Country Planning Act 1990;
> - The Planning and Compulsory Purchase Act 2004;
> - The Planning Act 2008.
>
> The provisions contained in the Planning (Wales) Bill seek to amend existing primary legislation, principally the 1990 and 2004 Acts."[14]

23. The Explanatory Memorandum explains that the Planning Acts "contain high level framework powers" and highlights the importance of subordinate legislation in detailing "the procedures used to prepare development plans and the operation of the development management system".[15]

24. The Explanatory Memorandum also states that:

> "A number of the provisions contained in the Planning (Wales) Bill depend upon subordinate legislation for implementation. A series of policy intent papers and consultation documents are being published alongside the Bill to outline detailed implementation matters."[16]

[14] Explanatory Memorandum, paragraphs 3.3–3.5
[15] Explanatory Memorandum, paragraph 3.6
[16] Explanatory Memorandum, paragraph 3.7

### *Evidence from the Minister*

25. At the start of the Fourth Assembly, the First Minister announced a Planning Bill that would consolidate existing legislation to make the planning system more transparent and accessible.[17]

26. We therefore asked the Minister why it had not been possible to introduce a consolidated Planning Bill. He told us:

> "… when we went out to consultation on this process, we wanted to fully understand the consequences of such a Bill. The planning laws are wide-ranging, and we recognised—very early on, actually—that there were probably two pieces of work required: the framework Bill, as presented to you and the Assembly, as well as a larger piece of work to look at consolidation, and including the Planning (Wales) Bill as such. We took advice and support from the planning advisory group … but we were also seeing what work could be done by the Law Commission in terms of consolidation … we think that, longer term, we can get a much better shape in terms of consolidation, of all planning aspects, at a later date. So, that is why it is our intention to pursue a second planning Bill, containing basically, consolidation of planning law."[18]

27. When asked about the purpose of the Bill, the Minister said:

> "… it is not a policy enabling Bill; it is a framework skeleton Bill of terms of procedure. What we have seen very clearly is that there are 25 planning authorities across Wales that deal with procedure in a very different way. What we are seeking to do with this Bill is the consolidation of procedure—so, consistency, fairness and enabling are the three key words that we have been using across the principle of development on this Bill. The engagement process has been huge, and the evidence returns have been a massive challenge, but an opportunity. What we are trying to do is to stabilise a planning system that operates effectively wherever you are in Wales."[19]

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[17] First Minister, Oral Statement, *The Welsh Government's Legislative Programme 2011-16*, Record of Proceedings, 12 July 2011
[18] CLA Committee, RoP paragraph [13], 10 November 2014
[19] CLA Committee, RoP paragraph [18], 10 November 2014

28. The Minister wrote to us on 2 December 2014, explaining how the Planning Bill interrelates with the Well-being of Future Generations (Wales) Bill and the Environment (Wales) Bill. In his letter of 9 January 2015 to the Chair of the Environment and Sustainability Committee, copied to us, he provided further information about how the planning system will accommodate the changes being introduced by the Well-being of Future Generations (Wales) Bill.

29. The Minister emphasised the need for consistency across Wales saying:

> "… people understand consistency. Wherever you are in Wales, you will be getting the same deal. This is about understanding what legislation will apply and how it will be interpreted and enacted … Therefore, within the Bill, the structure, we are saying, gives some consistency; you know if you are dealing with a council, wherever you are in Wales, or a local planning authority, you will be dealt with fairly, because the Bill will be very prescriptive about what is expected in terms of delivery."[20]

30. We asked the Minister whether, in streamlining and creating uniformity, he was also seeking to reduce the number of planning authorities and reduce the space for planning authorities to come to wildly different conclusions. He replied by saying:

> "The three words that I used were "fairness", "enabling" and "consistency" being right at the heart of the Bill. It would be fair to say that it is no secret that I suggested that 25 planning authorities for Wales is too many. We gave a submission … to the Williams commission that suggests that between 10 and 12 planning authorities would probably be the right number for … the effectiveness of planning resilience. That is key to the delivery of this. There is no structure in the Bill that will define what new planning authorities will look like, but it probably will be my intention at some point to table an amendment to look at powers that will give all planning authorities the same level of competence."[21]

31. He also added that he wanted:

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[20] CLA Committee, RoP paragraph [31], 10 November 2014
[21] CLA Committee, RoP paragraph [36], 10 November 2014

> "… a resilient service and if that means merging authorities planning functions, then that is what I will seek to do."[22]

32. In his letter to the Chair of the Environment and Sustainability Committee dated 7 January 2015, the Minister referred to the evidence that he gave us and stated that:

> "… a legislative approach is required to enable the Welsh Ministers to create and deliver effective, efficient and resilient planning services across Wales, where all planning authorities are treated equally in order to achieve this."

33. The Minister confirmed in the letter that it was his intention to explore a Welsh Government amendment which would enable National Park Authorities to be brought within the scope of provisions which allow for the establishment of joint planning boards. Currently the power to create joint planning boards under the *Town and Country Planning Act 1990* is confined to local authority areas.

34. When questioned on individual provisions, the Minister provided a number of responses that have relevance to the way in which the Welsh Government has approached the drafting of this Bill.

35. During questioning on sections 15 and 16, the Minister explained why detail was not being placed on the face of the Bill:

> "This piece of legislation is for 15 or 20 years. What we need to have is the flexibility to look at schemes that could be of national significance and have the ability to bring them in and make changes with flexibility, as opposed to amending the face of the Bill."[23]

36. On section 17 and as regarding the definition of Developments of National Significance, the Minister told us that:

> "We are looking at ensuring that we define this in regulation, again to have the flexibility to understand what is of national significance, again driven by local communities. We need to understand what that will mean for the future, and what I would be reluctant to do is to have this on the face of the Bill, so that every time we have a perceived new criterion for

[22] CLA Committee, RoP paragraph [39], 10 November 2014
[23] CLA Committee, RoP paragraph [60], 10 November 2014

national significance—and that can vary in terms of community, as well, in terms of what that may mean—we will have the flexibility to change that in regulations, as opposed to amending the framework of the Bill."[24]

37. When questioned on secondary consents under section 18 he said:

> "We cannot be definitive in this because we do not know what the future provisions may or may not need to be. We believe that we have futureproofed the Bill in order for us to be adaptable, where a DNS procedure and secondary consents are needed to be flexible in that process."[25]

***Our view***

38. We note the Minister's comments regarding consolidation of planning law and welcome the publication of Keeling Schedules to assist with the reading of the Bill, although they could have been more clearly presented (for example by cross-referencing to the relevant Bill provisions).

39. We also consider that the Minister's letters of 2 December 2014 and 9 January 2015 provided a welcome level of detail explaining the relationship between this and other Welsh Government Bills.

40. Nevertheless, despite the Minister providing these helpful documents, the Bill is difficult to follow.

41. As a proposed piece of law, we consider that the Bill as currently drafted lacks coherence and as a result, clarity.

42. We find it disquieting to hear the Minister tell us that:

> "… it is not a policy enabling Bill; it is a framework skeleton Bill in terms of procedure."

In our view, the Bill is clearly policy enabling in many respects and we believe that it could allow for significant shifts in policy without proper

[24] CLA Committee, RoP paragraph [72], 10 November 2014
[25] CLA Committee, RoP paragraph [86], 10 November 2014

scrutiny. Our reservations about framework Bills are well-documented.[26]

43. We consider that more detail could have been placed on the face of the Bill.

44. As a general observation, we find it somewhat strange that the Welsh Government is able to provide Statements of Policy Intent for regulations relating to some significant matters of policy, yet is unable to place some of that detail on the face of the Bill.

45. We note the comments of the Minister at paragraphs 35 – 37 above. The theme that emerges from these comments is that information cannot be placed on the face of the Bill because it is not possible to predict what the policy will be in the future. In addition, the need for flexibility is raised as an issue.

46. We view these comments with some concern, particularly in light of the views expressed in the Welsh Government's submission to our Making Law inquiry which states:

> "There is also significantly greater flexibility in making subordinate legislation as it is not subject to the same timetable constraints as Assembly Bills and it enables the law to be updated to match changing circumstances or for the law to be corrected or amended in the light of experience.
>
> If this process works well, it would help the Assembly to focus on the essential points, policy and principle, in its scrutiny."[27]

47. The information that should be placed on the face of the Bill should in part be determined by the issue that has led to the need for a Bill in the first place, in essence to deal with the "here and now". Primary legislation should not be framed so broadly with the intention of effectively using it as a shell vehicle for the introduction of subordinate legislation over a long period of time to deal with what may happen in the future.

48. This approach limits the ability of the Assembly as a legislature to scrutinise, influence and to debate suggested improvements to

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[26] See for example Chapter 4, Constitutional and Legislative Affairs Committee, *Report on the Education (Wales) Bill*, November 2013

[27] Making Laws Inquiry, Written Evidence, ML 13, paragraphs 27-28

significant policy matters in a democratic forum. It does not represent good practice.

49. We note the emphasis in the Explanatory Memorandum on the use of subordinate legislation in planning law and recognise that there is clearly a place for subordinate legislation to deal with certain matters (for example aspects of detail, administration and process). However, we are concerned that the Welsh Government has not got the balance right on this Bill. We do not believe it is appropriate to leave significant policy matters to be dealt with by means of subordinate legislation.

50. The Minister suggests in his evidence that using subordinate legislation would avoid the need to amend primary legislation. This line of argument should not be used to justify leaving off important material from the face of the Bill. Another approach would be to include provisions on the face of the Bill and then amend them by subordinate legislation, subject to the affirmative procedure, based on experience or policy developments and within a reasonable period of time. Including these so-called "Henry VIII powers" is not an ideal approach to law-making, but it could be a reasonable compromise if the Welsh Government considers such flexibility to be absolutely necessary. This approach would have the advantage of giving planners, developers and other key stakeholders greater certainty over the broad shape of the planning system and the law that will apply (subject to commencement) at the time of the Bill's Royal Assent.

**Conclusion 2: we believe that more detail should be placed on the face of Bill, particularly in relation to significant policy matters.**

51. Chapter 5 of our report identifies specific policy areas that should be dealt with on the face of the Bill and makes recommendations accordingly.

52. During the evidence sessions, while discussing matters of consistency between planning authorities, the Minister talked of amending the Bill "to look at powers that will give all planning authorities the same level of competence" and subsequently of being prepared to merge "authorities on planning functions terms" (see paragraphs 30 and 31 above). We acknowledge that the Minister has clarified these comments in correspondence with the Environment and Sustainability Committee.

53. Nevertheless, we wish to place on record our concern that such fundamental matters of policy could potentially be inserted into the Bill during later stages of the legislative process. Such an approach would limit the scope for engagement between stakeholders and the relevant policy committee on the precise nature of any wording to be included on the face of the Bill, reducing the level of scrutiny in the process.

# 5. Powers to make subordinate legislation – observations on specific powers

### *Background*

54. The Bill contains 65 powers to make orders and regulations, with four of these subject to the affirmative procedure. These are summarised in Part 5 of the Explanatory Memorandum.

55. We report below on the issues of most concern to us.

### Part 2 – Development planning

56. Part 2 relates to the Development Plan process. Section 2 replaces the Wales Spatial Plan with a new national plan, the National Development Framework (NDF). Sections 3-9 deal with the preparation of a new tier of Strategic Development Plans (SDPs). Sections 10-13 make various changes to the Local Development Plan (LDP) process.

### *Section 3 – Designating strategic planning areas and establishing strategic planning panels*

57. Section 3 inserts sections 60D to 60G into the *Planning and Compulsory Purchase Act 2004*.

58. Section 3(1) inserts section 60D (Power to designate strategic planning area and establish strategic planning panel) into the *Planning and Compulsory Purchase Act 2004*. Section 60D(1) enables Welsh Ministers to make regulations designating a strategic planning area and establishing a Strategic Planning Panel. Before making regulations, the Welsh Ministers must have issued a direction under section 60E (Preparation and submission of proposal for strategic planning area) and the responsible authority must have either submitted a proposal for an area to be designated or have failed to do so within a specified period. The Welsh Ministers must also have undertaken consultation, if required.

59. The Statements of Policy Intent document states that:

> "The regulations that establishes a Strategic Planning Area, a Strategic Planning Panel (SPP) and the Strategic Development Plan (SDP) for that area will set out:

Details of the area including a map of the boundary;

- The name by which the SPP is to be known;
- The number of members on the SPP including the split of two thirds local planning authority members and one third nominated members from social economic and environmental organisations; and
- the functions of the SPP."[28]

60. The regulations are subject to the negative procedure because they prescribe "technical matters of detail, which may change from time to time."[29]

***Evidence of the Minister***

61. When asked why such significant changes were being made by regulations (under section 60D(1)) using the negative procedure, the Minister said:

> "You call them significant. I would call them important process issues in the whole structure of the way the planning system works. They are not effectively being required to do something new. What we are seeking for them to do is to bring data together and inform better, on a regional basis, planning detail. The principle of this is not new; we have city regions that operate in a strategic way across a region not in legislation. We are saying that this just gives us an opportunity to start to frame operational issues of how local planning authorities can interact better at a strategic level in legislation.
>
> We believe … that the procedure that we have laid for this is of a technical nature. The detail of this will be the detail that the strategic panels consider, not in terms of the structural approach to how we get there. We believe that we have applied the appropriate procedure to create the strategic planning panels…"[30]

62. An official accompanying the Minister noted that the Statements of Policy Intent "describe how we intend to use those powers"[31] and added:

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[28] Statements of Policy Intent, page 5
[29] Explanatory Memorandum, Chapter 5, page 52
[30] CLA Committee, RoP paragraphs [42-43], 10 November 2014
[31] CLA Committee, RoP paragraph [49], 10 November 2014

> "… the basic principle behind the powers is that we recognise that there is a need for strategic planning in certain parts of Wales, but we do not wish to be overly prescriptive in terms of the area, the membership and those sorts of issues. So, we are seeking an opportunity for those areas themselves to actually identify the area and the membership that they want to have on those panels."[32]

63. The Minister added that the "power when exercised, and the Order, that will be made will be based upon evidence"[33] and noted:

> "… it is about making sure that local authorities and the strategic planning areas have their view on what the democratic appropriateness is in terms of that determination and how we balance that regarding responsibility, consistency and democratic accountability. They are all of fundamental importance, but more importantly the fundamental point here is consultation—not us dictating it; it is about being driven from the bottom up."[34]

***Our view***

64. In our view, designating strategic planning areas and establishing strategic planning panels are not matters of technical detail; they represent a significant matter of policy that could have wide-ranging implications for the delivery of planning services across Wales.

65. The strategic plans that are produced by the panels will have 'development plan status' under section 38 of the *Planning and Compulsory Purchase Act 2004* and will be one of the plans along with the National Development Framework and Local Development Plan by which planning permission is determined. Whilst there is voluntary collaboration at a strategic level at present within some local authorities, and there is for example provision within the 2004 Act for joint local development plans, we do not agree with the Minister that local authorities are not being required to do something new.

66. In our view it would be appropriate for regulations made under section 60D(1) of the *Planning and Compulsory Purchase Act 2004* (as

[32] CLA Committee, RoP paragraph [49], 10 November 2014
[33] CLA Committee, RoP paragraph [52], 10 November 2014
[34] CLA Committee, RoP paragraph [53], 10 November 2014

inserted by section 3 of the Bill) to be subject to the affirmative procedure.

**Recommendation 1: we recommend that the Minister should table an amendment to the Bill applying the affirmative procedure to the making of regulations under section 60D(1) of the *Planning and Compulsory Purchase Act 2004*.**

**Part 3 – Pre-application procedure**

67. Part 3 introduces new procedures for pre-application consultation and powers about the provision of pre application services.

***Section 15 – Requirement to carry out pre-application consultation***
***Section 16 – Requirement to provide pre-application services***

68. Sections 15 and 16 of the Bill amend the *Town and Country Planning Act 1990* and make provision for a pre-application procedure. The provisions are designed to "frontload" the development management system. The Explanatory Memorandum states:

> "The purpose of the provisions is to introduce a statutory requirement for pre-application engagement with specified persons, likely to include the public and statutory consultees in the planning application process, where a development is of a description specified in a development order under subordinate legislation."[35]

69. Section 15 contains six order-making powers and section 16 contains four regulation-making powers. All are subject to the negative procedure. The Welsh Government has recently consulted on its proposals for the use of the powers in sections 15 and 16.[36]

70. We asked why so many of the provisions in sections 15 and 16 have been left to subordinate legislation rather than appearing on face of the Bill. Having explained the benefits of the pre-application process,[37] the Minister said:

> "In terms of the specific question of whether this should be on the face of the Bill and not left to subordinate legislation, as the

[35] Explanatory Memorandum, paragraph 3.59
[36] Welsh Government, *Consultation Document: Frontloading the development management system*, 6 October 2014
[37] CLA Committee, RoP paragraphs [57-58], 10 November 2014

> Member will be aware, when we launched the Bill, it was a weighty document, with the explanatory memorandum being another weighty document, and we also said that we will be issuing lots of consultation and statements of intent along the way. We issued the statement of intent on Friday … that was quite a challenge for us, because I wanted to ensure that we got this out to you as soon as possible and gave you the most detail possible to be as transparent as we could be."[38]

***Our view***

71. We consider that nine of the order and regulation making powers under sections 15 and 16 are appropriately subject to the negative procedure because they deal predominantly with issues relating to process and administration.

72. However, we note that an order made under section 61Z(1)(b) of the *Town and Country Planning Act 1990* (as inserted by section 15 of the Bill) enables Welsh Ministers to specify descriptions of development which can be subject to pre-application consultation.

73. It is not clear to us how this could be regarded as a 'technical matter' given that pre-application consultation could involve significant costs for an applicant and therefore act as a barrier to those who wish to apply for permission. Although the Minister is currently consulting on categories of 'major' development to which the requirement would apply, the power as drafted would allow such a requirement to be placed on applicants for small householder extensions. We acknowledge however that flexibility and the ability to change the categories of development which require pre-application consultation are required.

74. On balance, and if the Minister does not intend to include on the face of the Bill descriptions of development which can be subject to pre-application consultation, we believe that such an order would benefit from the more rigorous scrutiny afforded by the affirmative procedure.

[38] CLA Committee, RoP paragraph [59], 10 November 2014

**Recommendation 2: we recommend that if the Minister does not intend to include on the face of the Bill those developments which are to be subject to pre-application consultation (and permit them to be amended by affirmative instrument), he should table an amendment to the Bill to apply the affirmative procedure to the making of an order under section 61Z(1)(b) of the *Town and Country Planning Act 1990*.**

**Part 4 – Application to Welsh Ministers**

75. Sections 17-19 introduce a new category of planning permission known as Developments of National Significance (DNS) which will be decided by Welsh Ministers.

76. Section 20 will provide developers with the opportunity to make an application for planning permission directly to Welsh Ministers in circumstances where the Local Planning Authority is considered to be 'underperforming'.

***Section 17 – Developments of national significance: applications for planning permission***

77. Section 17 inserts sections 62D (Developments of national significance: applications to be made to Welsh Ministers) and 62E (Notification of proposed application under section 62D) into the *Town and Country Planning Act 1990*. Section 62D includes two regulation-making powers; one, for setting out criteria for Developments of National Significance, to be subject to the affirmative procedure (section 62D(3)), and the other (section 62D(6)) for describing the type of applications to be dealt with as Developments of National Significance, by the negative procedure.

78. Section 62E includes two order-making powers relating to notification requirements for Developments of National Significance (both subject to the negative procedure).

79. Decisions on Developments of National Significance by the Welsh Ministers are final.[39]

80. We asked the Minister why there is currently no definition of Developments of National Significance on the face of the Bill. The Minister replied by saying:

[39] Statements of Policy Intent, page 12

> "We are looking at ensuring that we define this in regulation, again to have the flexibility to understand what is of national significance, again driven by local communities. We need to understand what that will mean for the future, and what I would be reluctant to do is to have this on the face of the Bill, so that every time we have a perceived new criterion for national significance—and that can vary in terms of community, as well, in terms of what that may mean—we will have the flexibility to change that in regulations, as opposed to amending the framework of the Bill."[40]

81. When questioned further about Developments of National Significance being a central principle and not being on the face of the Bill, the Minister agreed to write to us, although in doing so, he did not see "this as such a fundamental change as the Member would suggest", feeling that "this is a process-driven issue".[41] He also suggested that "the majority of DNSs … are encompassed within the call-in principle that is already in place",[42] before adding that:

> "With the DNS process, at least it will be defined in the legislation where the principle, of whatever it may be, will be, whether it is a principle of a development of over 50 homes, for instance—and that is just an example; it is not definitive, Chair—that may be categorised within the category of DNS. That would be consistent across Wales. Currently that is not the case; an applicant for a similar development may have it called in or may not have it called in, depending on where you are in Wales. This gives a structure to the approach so that you know exactly what will be dealt with by local authorities and exactly what will be dealt with by ministerial intervention or by PINS. As regards the criteria for DNS, that will be done by the affirmative procedure, so it is not the case that Ministers will issue guidance or principles around this; there will also be the checks and balances of the Assembly."[43]

82. He also noted that:

[40] CLA Committee, RoP paragraph [72], 10 November 2014
[41] CLA Committee, RoP paragraph [75], 10 November 2014
[42] CLA Committee, RoP paragraph [75], 10 November 2014
[43] CLA Committee, RoP paragraph [75], 10 November 2014

> "… there is flexibility in order for us to have any additional powers that come to Wales and the ability to add that to DNS, if it was appropriate, would enable us to do this, rather than the principle of amending the Bill at primary legislation stage."[44]

83. The Minister noted that in England similar schemes were included on the face of the legislation.[45] He also explained that indications of these proposals for Developments of National Significance were contained in the consultation document, Positive Planning[46] and provided them to us in a subsequent letter.[47] In this letter, he added that:

> "DNS will also be specified by the Welsh Minsters in the National Development Framework (NDF) document, which is subject to a 12 week public consultation process followed by Ministerial consideration. The final draft NDF will then be laid before the Assembly for approval for a period of 60 days. It is only these developments and those that meet the criteria set out in the regulations that will be DNS. The NDF can be reviewed and revised at any time subject to further scrutiny. Guidance will be produced outlining this process."

84. We have also noted that the Explanatory Memorandum states that an emerging theme from the consultation was:

> "Concerns about a potential democratic deficit in relation to the strategic planning proposals and Development of National Significance application procedures."[48]

***Our view***

85. Section 17 of the Bill provides that an application for a Development of National Significance is to be made to the Welsh Ministers instead of to the local planning authority.

86. This is a significant matter of policy and it is surprising that no definition or classification of Developments of National Significance

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[44] CLA Committee, RoP paragraph [78], 10 November 2014
[45] CLA Committee, RoP paragraph [60], 10 November 2014
[46] Welsh Government, *Consultation Document: Positive Planning – Proposals to reform the planning system in Wales*, 4 December 2013
[47] Letter from Carl Sargeant AM, the Minister for Natural Resources, *Planning (Wales) Bill*, 2 December 2014
[48] Explanatory Memorandum, paragraph 4.24

appears on the face of the Bill, particularly when such information appeared in a Welsh Government consultation paper that pre-dated the Bill and was subsequently provided to us by the Minister.

87. We can see no logical reason why this information cannot be placed on the face of the Bill (perhaps in a Schedule), with a power provided for Welsh Ministers to amend it by subordinate legislation subject to the affirmative procedure, should that be necessary. Such an approach would provide greater certainty and clarity to those affected by the law.

88. In reaching this view, we note that similar provisions exist in other relevant legislation applying to England and Wales. The *Planning Act 2008* lists categories of development, known as Nationally Significant Infrastructure Projects, (which require Secretary of State Consent) on the face of that Act. The Secretary of State is given a power to amend the list by way of regulations to add or remove a category of development from the list should that prove necessary.

**Recommendation 3: we recommend that the Minister should table amendments to the Bill to:**

- **include on its face categories of developments to be classified as nationally significant; and**
- **allow such categories to be amended by subordinate legislation subject to the affirmative procedure.**

89. More generally, we are disappointed that the information about Developments of National Significance did not appear on the face of the Bill on introduction. This would have allowed for a greater level of legislative scrutiny than is afforded by scrutiny during amending stages or of subordinate legislation. While we accept that Welsh Ministers will have consulted stakeholders on this issue, that is a very different process from scrutiny by the Assembly of specific and confirmed proposals formally introduced by the Welsh Government.

### *Section 18 - Developments of national significance: secondary consents*

90. Section 18 inserts sections 62F (Developments of national significance: secondary consents), 62G (Developments of national significance: supplementary provision about secondary consents) and

62H (Developments of national significance: meaning of secondary consent) into the *Town and Country Planning Act 1990*.

91. Under the Bill, Welsh Ministers will be permitted to make decisions on consents which they consider to be connected to an application for the new category of Developments of National Significance and which they consider should be made by them instead of the normal consenting authority. A decision on a secondary consent is final.

92. Section 62G(6) would enable Welsh Ministers by regulations to provide for other enactments or requirements in those enactments to apply with changes or not to apply at all, when making decisions on secondary consents. The regulations are subject to the negative procedure because they prescribe "technical matters of detail, which may change from time to time".[49]

93. Section 62H(1) will allow Welsh Ministers to set out in regulations the meaning of a "secondary consent". Welsh Ministers may only prescribe descriptions of consents or notices as being 'secondary consents' where the provision concerning the consent would be within the legislative competence of the Assembly if it were contained in an Act, and where the consent is given by a body exercising functions of a public nature. The regulations are subject to the negative procedure because they prescribe "technical matters of detail, which may change from time to time".[50]

94. We asked the Minister why there is so little information on the face of the Bill on the relationship between these consents and the Developments of National Significance, and as a consequence why the negative procedure was chosen for the regulations. He said:

> "As to it not being defined on the face of the Bill, the issue around whether, in relation to any future legislation, whether hazardous substance consents, listed building consents, and planning permission surrounding them, all the secondary consent needs to have the flexibility based upon the DNS criteria—. So, it is about understanding what the DNS will be and then what the application may be in the future to secondary consents ... We cannot be definitive in this because

[49] Explanatory Memorandum, Chapter 5, page 62
[50] Explanatory Memorandum, Chapter 5, page 62

> we do not know what the future provisions may or may not need to be. We believe that we have futureproofed the Bill in order for us to be adaptable, where a DNS procedure and secondary consents are needed to be flexible in that process."[51]

95. When asked why regulations in relation to Developments of National Significance are subject to the affirmative procedure and those in relation to secondary consents are subject to the negative procedure, the Minister said:

> "It is purely that they are secondary consents. We think that they are ancillary to the first decision-making process …"[52]

96. We note that the Statements of Policy Intent identifies those secondary consents that are to be initially prescribed by regulations to be made under section 62H(1) of the *Town and Country Planning Act 1990* and also states that "additional regulations may add, amend or remove a consent from this list".[53]

***Our view***

97. We believe the same arguments apply to secondary consents as apply to Developments of National Significance.

98. Again, we regard secondary consents as matters of policy rather than technical matters.

99. We note the Minister's suggestion, in effect, that information shouldn't be placed on the face of the Bill because the Welsh Government cannot be definitive about what future provisions may or may not need to be. As we have indicated earlier in paragraph 47 we do not consider this to be a valid or appropriate argument for keeping material off the face of a Bill.

100. In addition we believe that secondary consents are of more importance than alluded to by the Minister, particularly as they are consents that would have been decided much more locally at one stage and potentially could be very wide in scope.

101. We also note that under the *Planning Act 2008*, a non-exhaustive list of the matters to be included by way of ancillary consents which

[51] CLA Committee, RoP paragraph [86], 10 November 2014
[52] CLA Committee, RoP paragraph [90], 10 November 2014
[53] Statements of Policy Intent, pages 14-15

are similar to secondary consents is contained in Section 120 and Schedule 5 to the Act. We recognise however that the process for granting development consent for National Infrastructure Projects is different to process for Developments of National Significance in this Bill.

**Recommendation 4: we recommend that the Minister should table amendments to the Bill to:**

- **include on its face a list of all matters which could presently be categorised as secondary consents; and**
- **allow such information to be amended by subordinate legislation subject to the affirmative procedure**.

***Section 20 – Option to make application to Welsh Ministers***

102. Section 20 inserts sections 62L (Option to make application directly to Welsh Ministers) and 62M (Option to make application to Welsh Ministers: connected application) into the *Town and Country Planning Act 1990*. These provisions are intended to apply only when a local planning authority is considered to be "performing poorly" or "underperforming"[54] and is designated as such by the Welsh Ministers under section 62L(2). Section 62L(8) provides that the Welsh Ministers must publish "in whatever way they think fit", the criteria that they will apply in deciding whether to designate a local authority or revoke such designation.

103. Section 62L includes two regulation-making powers and section 62M includes one regulation-making power and an order-making power. All are subject to the negative procedure because they prescribe "technical matters of detail, which may change from time to time".[55]

104. The regulation-making power in section 62L(3) enables the Welsh Ministers to set out the types of development to which an application would be made to the Welsh Ministers rather than to a local planning authority, where a planning authority is underperforming. A decision made by the Welsh Ministers under this section is final.

[54] Explanatory Memorandum, paragraphs 3.77–3.79
[55] Explanatory Memorandum, Chapter 5, pages 63-64

105. The regulation-making power in section 62L(5) enables the Welsh Ministers to describe the type of applications to be treated as "qualifying applications".

106. Section 62M(3)(b) enables the Welsh Ministers to prescribe in regulations the type of application which is to be treated as a "connected application" (i.e. made under the Planning Acts and connected with the application made under section 62L). Where an application for planning permission is made directly to the Welsh Ministers, the Bill also enables them to make a decision on any "connected application". Any such decision is final.

107. We asked the Minister whether the process relating to underperforming authorities was strictly delineated in legislation and whether the use of the negative procedure was appropriate in relation to the considerable powers available through regulations. He told us that "the principle of when an applicant has the option to apply directly to a Minister is one of significant importance"[56] and that:

> "… it is a last resort this element, in terms of the ability for a developer to apply directly to Welsh Ministers …"[57]

108. When asked how he would know whether a planning authority is underperforming, the Minister said:

> "We already have data in terms of a benchmark of where local authorities lie. We have 25 planning authorities. There is an Excel sheet—that is not a hidden document—in the public domain, which indicates already where local authorities are better than others in terms of their determination and application in relation to costs, fees, the applied length of determination, and the effectiveness of determination, more importantly … There will be a reporting process for each local planning authority in the future too, so we will be able to very clearly demonstrate where a local authority is not meeting its obligation in terms of the quality planning service that is expected."[58]

109. We note that in England, section 62B of the *Town and Country Planning Act 1990* requires the document setting out the criteria to be

[56] CLA Committee, RoP paragraph [97], 10 November 2014
[57] CLA Committee, RoP paragraph [97], 10 November 2014
[58] CLA Committee, RoP paragraph [99], 10 November 2014

applied in deciding whether to designate a local authority to be published and laid before the Houses of Parliament for 40 days without being annulled before it can come into force.

***Our view***

110. Section 20 provides potentially wide powers to Welsh Ministers, particularly in terms of designating underperforming authorities (which is the trigger for the application of this section) and taking decisions away from local authorities, in the event the applicant opts to apply to the Welsh Ministers.

111. It is not entirely clear what would constitute an underperforming local authority and we note that the Assembly has no specific role in relation to the criteria to be employed.

112. It is therefore difficult for us to comment on the powers to make subordinate legislation under section 62L and 62M of the *Town and Country Planning Act 1990,* to be inserted by section 20 of the Bill.

**Recommendation 5: we recommend that the Minister explains and clarifies during the Stage 1 debate on this Bill, the purpose of section 20 and how it will operate in practice, including:**

- **the criteria to be used in determining whether a local authority is underperforming;**
- **the types of developments to which it will apply;**
- **what assessment he has made of whether a provision similar to that contained in section 62B of the *Town and Country Planning Act 1990* would be appropriate.**

**Part 6 – Enforcement, appeals etc**

***Section 44 – Costs on applications, appeals and references***

113. Section 44 inserts section 322C into the *Town and Country Planning Act 1990* and would allow Welsh Ministers to direct that their own costs are recovered from the local planning authority or a party to an appeal. Such costs include the entire administrative cost incurred to include the general staff costs and overheads of the Welsh Government.

114. Under section 322C(5), the Welsh Ministers will be able to prescribe, by way of regulations, a standard daily amount for such

costs. The regulations are subject to the negative procedure because they prescribe "technical matters of detail, which may change from time to time".[59]

115. Paragraph 18 of Schedule 4 amends section 303 of the *Town and Country Planning Act 1990* to allow the Welsh Ministers to make regulations for fees to be charged for planning applications made directly to them. The Explanatory Memorandum states that powers to make regulations are subject to the affirmative procedure because they "will impose a financial burden on the public".[60]

116. We asked the Minister why regulations introduced under new section 322C (Costs: Wales) of the *Town and Country Planning Act 1990* were subject to the negative procedure, when, as with those made under paragraph 18 of Schedule 4, they would also impose a financial burden on the public.

117. In his letter of 2 December 2014 the Minister told us:

> "Under section 303 fees for planning applications and other matters have to be paid, irrespective of any other circumstances. Fees set under this section in effect set the level of income local planning authorities receive from the exercise of their development management functions, subject only to variability in the number of applications they receive. In contrast, under section 322C a costs order can only relate to costs which have actually been incurred (and will need to be reasonable in the case of the Welsh Ministers, applying public law principles). These costs are due to the behaviour of the applicant, appellant or other person against whom an order is made. In a sense the "burden" can be avoided by not behaving unreasonably."

***Our view***

118. We note that in his letter to us of 2 December 2014 the Minister also referred to current provisions in planning legislation relating to costs. In particular he referred to section 42 of the *Housing and Planning Act 1986* and section 250 of the *Local Government Act 1972*. The Minister pointed out that regulations made under section 42 of

[59] Explanatory Memorandum, Chapter 5, page 75
[60] Explanatory Memorandum, Chapter 5, page 81

the *Housing and Planning Act 1986* are currently made by negative procedure.

119. We note the Minister's evidence but have some concerns that new section 322C as inserted by section 44 extends the Minister's ability to recover costs from an unsuccessful appellant to all types of appeals whether they are considered at an inquiry, hearing or on the basis of written representations. Section 42 of the *Housing and Planning Act 1986* only applies to costs in the case of certain prescribed inquiries and public proceedings.

120. Whilst paragraph 3.152 of the Explanatory Memorandum provides that the Government's "proposal is to give the Welsh Ministers the ability to recover their own costs in cases where a party or parties behave unreasonably" there is nothing in the Bill which states this explicitly.

121. We recognise that when making any award of costs the Welsh Government will be bound by general public law principles. Nevertheless, our view is that before embarking on any appeal, it should be clear to applicants both the amount of costs and circumstances in which costs may be claimed against them. Although there is current guidance in *Circular 23/93 - Awards of costs incurred in planning and other (including compulsory purchase order) proceedings*, this would need to be revised to reflect the current position under the Bill.

**Recommendation 6: we recommend that before section 44 of the Bill is commenced, guidance in relation to the award of costs incurred in planning proceedings is revised and published.**

***Section 53 – Power to make consequential etc. provision***

122. Section 53 would enable Welsh Ministers to make such consequential, incidental, transitional or saving provision as they consider appropriate in connection with the Bill. Whilst any regulations that amend or repeal primary legislation must be made using the affirmative procedure, we have some concerns with the power as drafted. We asked the Minister why such an approach was required.

123. The Minister told us that:

> "It is a tidying-up exercise. This is consistent with other legislation. I do not think that it compromises the Bill or, indeed, indicates that there is anything other than consequential to the Bill as interpreted by us or others, apart from yourselves."[61]

***Our view***

124. We believe that the construction "as they consider appropriate in connection with" provides Welsh Ministers with wider discretion to repeal or amend primary legislation than the more usual provision which would restrict consequential etc. amendments to those that are necessary for the purpose of giving full effect to provisions in the Act.

125. We do not believe that using "as they consider appropriate in connection with" is justified. It is an even wider power than simply "in connection with", which we expressed reservations about in our report on the Welsh Government's Well-being and Future Generations (Wales) Bill.

**Recommendation 7: we recommend that the Minister should table an amendment to section 53(1) of the Bill to delete the words "as they consider appropriate in connection with" and insert in their place "as they consider necessary for the purpose of, or in consequence of giving full effect to any provisions of".**

***Section 54 – Coming into force***

126. Sections 54(4) and 54(5)(b)(ii) will allow Welsh Ministers to include transitional, transitory or saving provision when making a commencement order, and this would be subject to no procedure.

***Our view***

127. It remains our view that commencement orders that commence provisions other than by simply naming a date of commencement (by virtue of making transitional, transitory or saving provision) should be subject to scrutiny and the negative procedure.

**Recommendation 8: we recommend that the Minister should table an amendment to the Bill to apply the negative procedure to orders made in accordance with section 54(5)(b)(ii) of the Bill.**

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[61] CLA Committee, RoP paragraph [113], 10 November 2014

## Crown application and consent

128. In our letter of 21 November 2014, we asked the Minister whether the amendments made by the Bill to the existing town and country legislation, which already binds the Crown, are also intended to bind the Crown and if so whether it would be clearer to state this expressly. In his response[62] the Minister said:

> "The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning Act 1990 bind the Crown and as such the amendments to those Acts made by this Bill will also bind the Crown. It is therefore not necessary to state this."

129. On the separate issue of whether the Queen's or Prince's consent was necessary, he added:

> "I consider, at this time, that Queen's or Prince's consent is not required in respect of the Bill. The earlier consent given in respect of the Planning and Compulsory Purchase Act 2004 is sufficient because the changes in the Bill affecting interests of the Crown are not substantive. This issue will be kept under review as the Bill progresses through the Assembly."

### *Our view*

130. No Bill may be passed without the consent of Her Majesty or the Prince of Wales (as Duke of Cornwall) when that consent is required by virtue of Standing Order 26.67, which implements section 111(4) of the *Government of Wales Act 2006*.

131. We remain concerned about the need for the Queen and/or the Prince of Wales to signify their consent to this Bill before Stage 4.

132. The Bill introduces some significant changes to the planning system in Wales, such as the National Development Framework which unlike the Wales Spatial Plan can be site specific and will have development plan status. The practical effect of this is that significant planning decisions will be taken in accordance with the Framework unless material considerations indicate otherwise.

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[62] Letter from Carl Sargeant AM, Minister for Natural Resources, *Planning (Wales) Bill*, 2 December 2014

133. Prior to 2006, the Crown was immune from the planning system. The *Planning and Compulsory Purchase Act 2004* made the necessary changes to primary legislation that were required, in order to apply the Planning Acts to the Crown. An analysis of several UK Acts of Parliament since 2006 show that notwithstanding the original consent, they have all required further consent from the Queen and in the case of the first three listed below, the Prince of Wales as well. We have in particular considered the:

- Planning Act 2008;
- Local Democracy, Economic Development and Construction Act 2009;
- Localism Act 2011;
- Growth and Infrastructure Act 2013; and
- Enterprise and Regulatory Reform Act 2013.

134. As we have not of course had sight of any of the consent documentation, we do not know on what basis fresh consent was deemed necessary. Other than the *Planning Act 2008* and *Growth and Infrastructure Act 2013* these Acts are not exclusively concerned with planning so there may have been other reasons for obtaining fresh consent.

**Recommendation 9: We recommend that the Minister confirms categorically during the Stage 1 debate that the Queen's or Prince's consent is not required in respect of the Bill and that in so doing, he sets out the reasons for his view, taking account of the views we express at paragraphs 130 to 134 of this report.**