

Explanatory Memorandum to the Ancient Monuments (Claims for Compensation) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Department of Economy, Science and Transport and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Ancient Monuments (Claims for Compensation) (Wales) Regulations 2017

Ken Skates
Cabinet Secretary for Economy and Infrastructure
8 May 2017

1. Description

- 1.1 The Ancient Monuments (Claims for Compensation) (Wales) Regulations 2017 (the 2017 Regulations) revoke and replace the Ancient Monuments (Claims for Compensation (Wales) Regulations 1991 (the 1991 Regulations).
- 1.2 The 2017 Regulations broadly restate existing provisions about when a claim for compensation must be made under sections 7, 9 and 46 of the Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act). They also make new provision for the manner in which compensation claims under those sections should be made.
- 1.3 The 2017 Regulations also prescribe when and how a claim for compensation must be made under sections 1AD and 9ZL of the 1979 Act (as inserted by sections 3(1) and 13(1) of the Historic Environment (Wales) Act 2016 (the 2016 Act) respectively).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 None

3. Legislative background

- 3.1 The Welsh Ministers make these Regulations in exercise of the powers conferred on them by sections 1AD(2) and 9ZL(1) of the 1979 Act, and in exercise of the powers conferred on the Secretary of State by section 47(1) of the 1979 Act and now exercisable by the Welsh Ministers.
- 3.2 The functions of the Secretary of State under the 1979 Act (except those Treasury functions in section 50 of that Act), so far as exercisable in relation to Wales, were transferred to the then National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672), see entry in Schedule 1 for 1979 Act. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006.
- 3.3 In accordance with the provisions of section 60(5) of the 1979 Act, this statutory instrument follows the negative procedure.

4. Purpose and intended effect of the legislation

- 4.1 The 1979 Act permits compensation claims to be made for:
 - loss or damage resulting from interim protection if the Welsh Ministers decide not to proceed with the proposed designation of a scheduled

monument (section 1AD of the 1979 Act, as inserted by section 3 of the 2016 Act); and

- expenditure incurred or other loss or damage resulting from the refusal of scheduled monument consent, or its grant subject to conditions, for certain specified descriptions of works (section 7 of the 1979 Act);
- expenditure incurred or other loss or damage if works affecting a scheduled monument cease to be authorised (section 9 of the 1979 Act);
- loss or damage resulting from the service of a temporary stop notice if works to a scheduled monument were not unauthorised or the notice is withdrawn otherwise than following the grant of scheduled monument consent (section 9ZL of the 1979 Act, as inserted by section 3 of the 2016 Act).
- damage to land or chattels resulting from the exercise of any power to enter, or other certain powers, in the 1979 Act (section 46 of that Act);

4.2 The 2017 Regulations replace the 1991 Regulations to prescribe how and when such compensation claims must be made.

4.3 To increase flexibility and reduce obstacles for claimants, compensation claims only need to be made to the Welsh Ministers in writing. The form required by the 1991 Regulations is no longer required.

4.4 The 2017 Regulations require all compensation claims under the 1979 Act to be submitted in writing within six months from the date of the decision or action that gave rise to the claim.

5. Consultation

5.1 Consultation was conducted between 11 July and 3 October 2016 on a package of proposed secondary legislation and guidance. The consultation asked specifically for views on proposals to set a six-month limit for compensation claims. Two organisations representing owners' interests did not support the proposal and suggested a longer claim period. However, 25 (93%) of consultees who expressed a view supported the proposal, with several noting that it would introduce consistency for all compensation claims under the 1979 Act and parity with listed building legislation.

5.2 A summary report on the consultation is available on the Welsh Government website at:

<https://consultations.gov.wales/consultations/proposals-secondary-legislation-support-historic-environment-wales-act-2016-and-draft>

6. Regulatory Impact Assessment (RIA)

6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. A

Regulatory Impact Assessment has not been prepared as they will not impose any new costs or burdens but are instead intended to provide clarity and consistency.