

## Explanatory Memorandum to the Ancient Monuments (Applications for Scheduled Monument Consent) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Department of Economy, Skills and Natural Resources 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 (Applications for Scheduled Monument Consent) (Wales) Regulations 2017.

Ken Skates  
Cabinet Secretary for Economy and Infrastructure  
8 May 2017

## **1. Description**

1.1 The Ancient Monuments (Applications for Scheduled Monument Consent) (Wales) Regulations 2017 (2017 Regulations) revoke the Ancient Monuments (Applications for Scheduled Monument Consent) Regulations 1981 (1981 Regulations) and the Ancient Monuments (Applications for Scheduled Monument Consent) (Welsh Forms and Particulars) Regulations 2001 (2001 Regulations) in relation to Wales, and make new provision for procedures for making applications for scheduled monument consent (SMC).

1.2 The 2017 Regulations require an SMC application to be made on a form published by the Welsh Ministers, or one substantially like it, and set out the information that must be provided on that form. They also give the Welsh Ministers discretion to allow applications to be made in other ways. This will permit a simplified SMC procedure to authorise minor, beneficial works to a scheduled monument without the need for a formal written application.

1.3 The 2017 Regulations also make consequential amendments to the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992 (the 1992 Regulations) and the Developments of National Significance (Wales) Regulations 2016, and relevant saving provision.

## **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 2(5B) and 60(1A) of, and Paragraph 1(3) of Schedule 1 to, the Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act), as inserted by sections 5(1), 40(1) and 5(2) of the Historic Environment (Wales) Act 2016 respectively; and in exercise of the powers conferred on the Secretary of State by paragraph 1(1) of Schedule 1 to the 1979 Act and now exercisable by the Welsh Ministers.

3.2 The functions of the Secretary of State under the 1979 Act (except the Treasury function 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 the Ancient Monuments and Archaeological Areas Act 1979. 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 and is therefore subject to annulment by the National Assembly for Wales.

## **4. Purpose and intended effect of the legislation**

4.1 Most types of work to a scheduled monument require SMC and a significant number of applications involve straightforward or minor works. Currently, an SMC application must be submitted in the form prescribed by regulations. After considering the application, the Welsh Ministers issue an interim decision with any proposed conditions. The applicant may then accept the decision, make further representations or request a hearing or public local inquiry before the final written SMC is granted. This process has been unchanged since the 1979 Act was enacted. While appropriate for complex applications, it is bureaucratic and can deter owners and others from carrying out small-scale, positive works or repairs to scheduled monuments.

4.2 The changes made by the 2017 Regulations give the Welsh Ministers discretion to dispense with the requirement for a formal written application and allow an SMC application to be made otherwise than in writing. However, the Regulations also limit that discretion. The Welsh Ministers can only exercise it if works to a scheduled monument will be minor and for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions to the monument (in conformity with section 2(2)(b) of the 1979 Act). Such minor works could include maintenance or repair that would benefit the monument.

4.3 In circumstances where this simplified procedure is not permitted by the 2017 Regulations, a formal written application for SMC in compliance with the requirements set out in the Regulations will be required. These requirements replace the prescribed forms in the 1981 Regulations and the Welsh language counterparts provided for by the 2001 Regulations. Under the new Regulations, the Welsh Ministers, will be able to amend or update the application form without resorting to a statutory instrument.

4.4 Irrespective of the method of application, where SMC is granted it must be given in writing and set out any conditions to which the consent is subject.

4.5 The 2017 Regulations also make purely consequential amendments to the 1992 Regulations. These modify the 2017 Regulations in circumstances where regulation 4 of the 1992 Regulations applies (i.e. where SMC is required for proposals included in an application made under section 6 of the Transport and Works Act 1992 and either the application for SMC has been made not later than 10 weeks after the section 6 application; or where the Secretary of State has given a direction that regulation 4 of the 1992 Regulations should apply).

## **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 document asked specifically for views on the proposed mechanism for a simplified SMC process for minor, uncontentious works. The proposal was

overwhelmingly supported by 91% of those that responded. A summary report of the consultation responses 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**

6.1 The impacts of the simplified SMC procedure were considered in the agreed Regulatory Impact Assessment prepared for the Historic Environment (Wales) Act 2016 (pages 60 to 64). As a result it was not considered necessary to prepare an additional Regulatory Impact Assessment. The Regulatory Impact Assessment concluded that the main benefit of the simplified procedure would be in encouraging owners to carry out small-scale, beneficial works to scheduled monuments, but that it would also bring small cost savings for both owners and the Welsh Ministers. A copy of the assessment may be obtained from the attached link (<http://www.assembly.wales/laid%20documents/pri-ld10184-em-r/pri-ld10184-em-r-e.pdf>) or from Historic Environment Service (Cadw), Plas Carew, Unit 5/7 Cefn Coed, Parc Nantgarw, Cardiff, CF15 7QQ.