

Explanatory Memorandum to:

The Local Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2017

I am satisfied the benefits justify the likely costs.

Lesley Griffiths
Cabinet Secretary for Environment and Rural Affairs, one of the Welsh Ministers
31 March 2017

Part 1 - Explanatory Memorandum

1. Description

- 1.1 The Local Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2017 (“the 2017 Regulations”) apply where the Welsh Ministers are authorised to recover costs borne by them in connection with:
- inquiries in relation to which the Welsh Ministers are entitled to recover their costs under or by virtue of section 250(4) of the Local Government Act 1972 (including compulsory purchase order inquiries to which that section is applied by section 5 of the Acquisition of Land Act 1981) or section 69(5) of the Land Drainage Act 1991 (“local inquiries”); and
 - qualifying procedures as defined by section 303A(1A) of the Town and Country Planning Act 1990 (independent examinations held in relation to local development plans and inquiries in relation to consideration of objections to simplified planning zone schemes) (“qualifying procedures”).
- 1.2 The 2017 Regulations prescribe the standard daily amount which may be recovered by the Welsh Ministers for each day, or part of a day, on which—
- a local inquiry sits or the person appointed to hold the local inquiry is otherwise engaged in work connected with it; or
 - the person appointed to hold a qualifying procedure is engaged in the holding of, or otherwise engaged on work connected with, the qualifying procedure.
- 1.3 The 2017 Regulations also revoke and replace the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011 (“the 2011 Regulations”) and earlier instruments.

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

- 2.1 None.

3. Legislative background

- 3.1 These Regulations are made in exercise of powers conferred on the National Assembly for Wales as the appropriate authority under section 303A(5) of the Town and Country Planning Act 1990 (“the 1990 Act”) and the powers conferred by section 42(4) of the Housing and Planning Act 1986 (“the 1986 Act”) on any Minister authorised, under or by virtue of statutory provisions mentioned in section 42(1) of the 1986 Act or to which that section is applied, to recover costs incurred by the Minister in relation to an inquiry.
- 3.2 The functions under section 303A(5) of the 1990 Act were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

- 3.3 Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 2000 provides for the functions under section 42 of the 1986 Act to be exercisable by the National Assembly for Wales concurrently with any Minister of the Crown by whom they are exercisable. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
- 3.4 The instrument is subject to the negative procedure.

4. Purpose and intended effect of the provisions

- 4.1 When a public examination or inquiry is held, the Welsh Ministers (or the Planning Inspectorate (“PINS”) working on their behalf) appoint an independent Planning Inspector (the appointed person) to undertake the examination or inquiry, with support from planning officers and other administrative staff.
- 4.2 Section 42 of the 1986 Act and section 303A of the 1990 Act provide for the costs incurred in relation to qualifying procedures and qualifying inquiries to be recovered and the basic principle for managing public money is to set a charge which recovers the full cost. This approach ensures the Government neither profits at the expense of the service users, nor makes a loss for tax payers to subsidise.
- 4.3 The prescribed standard daily amounts for local inquiries and qualifying procedures have not been updated since the 2011 Regulations and as a result, are not achieving the aim of cost recovery. This is not solely due to inflation, but also, the existing standard daily amounts being tied to the Planning Inspector’s time and overheads, as well as including a fixed element for the functions undertaken by planning officers and administrative staff. This is considered inflexible as the time and extent of input planning officers and administrative staff when undertaking public examinations and inquiries can vary on a case by case basis.
- 4.4 The purpose of the legislation is to revoke and replace the 2011 Regulations and prescribe new standard daily amounts which accurately reflect cost recovery. Given the inflexibility of the current standard daily amounts, the 2017 Regulations have been calculated to only prescribe for the time and overheads of the appointed person (see Appendix A for calculations).
- 4.5 Planning Officer and administrative staff time (including overheads), will be recovered by the Welsh Ministers by way of standard daily amounts and set out and published on the Welsh Government website. Those costs include separate planning officer and administrative staff time and their own overheads (see Appendix A). This provides greater flexibility and a more accurate method of achieving full cost recovery, given planning officer and administrative staff time can vary on a case by case basis.
- 4.6 The 2017 Regulations also prescribe standard daily amounts for the following 2 financial years. The purpose of this legislation is for future-proofing and to obviate the need to alter the Regulations on an annual basis. The standard daily

amounts for the 2018 and 2019 financial years have been calculated using inflation multipliers.

5. Consultation

- 5.1 The 'Appeals, Costs and Standard Daily Amounts' consultation paper was launched on 10 August 2016 and was open for responses until 4 November 2016. The consultation, amongst other things, contained two specific questions relating changes to the standard daily amounts charged by the Welsh Ministers.
- 5.2 The consultation was sent to those stakeholders most likely to be impacted by the proposals (both individuals and organisations), including all LPAs in Wales, public bodies and special interest groups. Consultees were asked to assign themselves to one of six broad categories indicated in the table below, which shows the breakdown of responses by category. The consultation generated 23 responses. A summary of the consultation and government response will be published alongside this Explanatory Memorandum and Regulatory Impact Assessment.
- 5.3 Overall, there was clear support for the proposals relating to changes to the standard daily amounts, with 87% of respondents agreeing with the amended method for charging daily amounts for qualifying procedures and local inquiries and 87% of respondents agreeing with the proposed standard daily amounts.

Part 2 - Regulatory Impact Assessment

- 6.1 The Welsh Ministers (or those acting on their behalf, such as the Planning Inspectorate (“PINS”) have powers to recover their costs for qualifying procedures and local inquiries under section 303A of the 1990 Act and section 42 of the 1986 Act respectively. The 2011 Regulations prescribe the standard daily amounts which are recoverable.
- 6.2 Two options have been considered:
- Option 1 – Do nothing (i.e. retain the existing standard daily amounts for local inquiries and other qualifying procedures).
 - Option 2 – Prescribe updated standard daily amounts for local inquiries and qualifying procedures in Regulations which addresses Planning Inspector time and their overheads alone. Provide a schedule of separate charges for general staff costs (including planning officer and administrative staff time) which will be published on the Welsh Government website.

Option 1 – Do nothing i.e. retain the existing standard daily amounts for local inquiries and other qualifying procedures.

Description

- 6.3 This option retains the status quo. The Welsh Ministers (or PINS) would only be able to recover costs based on the standard daily amounts prescribed in the 2011 regulations. These are:
- £742 for local inquiries; and
 - £679 for qualifying procedures.
- 6.4 The standard daily amounts are inclusive of Planning Inspector, planning officer and other administrative staff time, including overheads. They have not been updated since the introduction of the 2011 Regulations to account for inflation, or the varying time spent on each case by planning officer and administrative staff. This option proposes to retain the existing standard daily amounts.

Costs

Welsh Government

- 6.5 The average number of days taken for a local inquiry (which predominantly consist of Compulsory Purchase Order (“CPO”) inquiries) is estimated to be 111 days (including non-sitting days). The average cost to PINS in administering a local inquiry is £89,355¹, however, only £82,362² is charged. This is a cost of £6,993 per inquiry. The average number of CPO inquiries per year is 2. There have been no land drainage inquiries in the previous 5 years. The additional cost of these inquiries to the Welsh Ministers is approximately £14,000 per year.

¹ Based on an average total daily amount of £805 x 111 days = £89,355

² £742 x 111 days = £82,362

- 6.6 The average number of days taken for a qualifying procedure (predominantly Local Development Plan (“LDP”) examinations) is estimated to be 143 days. The average cost to PINS in administering a qualifying procedure is £114,543³, however, only £92,807⁴ is charged, resulting in total cost of £21,736 per LDP examination. Since 2008, an average of 3 LDPs have been submitted for examination per year. There have been no proceedings in relation to Simplified Planning Zones in the previous 5 years. The total average cost to Welsh Ministers is therefore approximately £65,200 per year.
- 6.7 Combining the costs of local inquiries and qualifying procedures, the overall total cost to the Welsh Ministers is approximately £79,200 per year.

Local Planning Authorities (“LPA”)

- 6.8 LPAs are responsible for paying the costs associated with LDP examinations and other qualifying procedures. Based on the existing standard daily amounts prescribed in regulations (£679) and the average number of LDP examinations per year, the total cost to LPAs is approximately £278,500 per year.

Development Industry

- 6.9 Developers are responsible for paying the costs associated with local inquiries (predominantly CPOs). Based on the existing standard daily amount (£742) and with an average of 2 inquiries held per year, there is a total annual cost of £164,750 to developers.

Third parties

- 6.10 There are no costs to third parties.

Benefits

Welsh Government

- 6.11 There are no identifiable benefits to the Welsh Government as the existing daily amounts recoverable by Regulations are not sufficient to recover the entire cost for the work associated with local inquiries and qualifying procedures.

Local Planning Authorities

- 6.12 As the existing standard daily amounts prescribed in Regulations do not reflect true cost recovery, LPAs are currently receiving a service for which they do not pay a reflective fee.

Development Industry

³ Based on an average total daily amount of £801 x 143 days = £114,543

⁴ £679 x 143 days = £92,807

- 6.13 As the existing standard daily amounts prescribed in Regulations do not represent full cost recovery for the Welsh Government, developers are currently receiving a service for which they are not paying a reflective fee.

Third parties

- 6.14 There are no identifiable benefits for third parties.

Option 2 – Prescribe updated standard daily amounts for local inquiries and qualifying procedures in Regulations which addresses Planning Inspector time and their overheads alone. Provide a schedule of separate charges for general staff costs (including planning officer and administrative staff time) which will be published on the Welsh Government website.

Description

- 6.15 This option will retain the processes and circumstances in which PINS (acting on behalf of the Welsh Ministers) can recover their costs. However, it is proposed, unlike at present, the same standard daily amount for Planning Inspectors will apply to both local inquiries and qualifying procedures. The standard daily amount prescribed in Regulations will only take account of Planning Inspector time and their overhead costs. Standard daily amounts for general staff costs (which include planning officers and administrative staff and vary depending upon how much time they spend per inquiry or qualifying procedure) will be recovered and will be published on Welsh Government website (See Appendix A).
- 6.16 For transparency and to future proof the charging method, the standard daily amounts will be prescribed and published for upcoming years, to account for inflation.

Costs

Welsh Government

- 6.17 The prescribed daily amount in Regulations for both local inquiries and qualifying procedures will be £508 and will include only Planning Inspector time and overheads. However, the Welsh Ministers are entitled by legislation to claim the entire administrative cost for these areas of work. The daily amounts for other staff members involved in local inquiries and qualifying procedures will be published on the Welsh Government website.
- 6.18 As the time spent on local inquiries and qualifying procedures can vary on a case-by-case basis for staff other than Planning Inspectors, the overall cost of a local inquiry or qualifying procedure will change. However, data from PINS has provided the average time spent by staff on local inquiries and qualifying procedures and based on this information, the average daily costs will be £805 for local inquiries and £801 for qualifying procedures (see Appendix A). This is based on full cost recovery and therefore, this option provides no additional costs to the Welsh Ministers.

Local Planning Authorities

- 6.19 As this option proposes to update the standard daily amounts to ensure full cost recovery for the Welsh Government, this will mean the current deficit LPAs currently benefit from (in relation to LDP examinations and other qualifying procedures) will be reduced to zero and will result in costs of £340,700 per year, a rise of £65,200 (22%).

Development Industry

- 6.20 As this option proposes to update the standard daily amounts to ensure full cost recovery for the Welsh Ministers, the deficit developers currently benefit from (in relation to local inquiries) will be reduced to zero and will result in a cost of £178,750 per year, a rise of £14,000 (8.5%).

Third Parties

- 6.21 There are no costs to third parties.

Benefits

Welsh Government

- 6.22 This option will ensure the Welsh Government fully recovers the costs they are entitled to for overseeing local inquiries and qualifying procedures, as well ensuring a fairer, more proportionate system for recovering costs.

Local Planning Authorities

- 6.23 LPAs will benefit from being charged more proportionately for work undertaken by the Welsh Ministers in relation to inquiries and qualifying procedures.

Development Industry

- 6.24 There are no identifiable benefits for developers; however, updated standard daily amounts will ensure developers will be charged proportionately for the work undertaken in relation to an inquiry.

Third Parties

- 6.25 There are no identifiable benefits for third parties.

Justification for two options

- 6.26 A third option was explored which sought to simply increase the standard daily amounts within the Regulations using the existing formula, which tie Planning Officer and other administrative staff costs within the standard daily amounts.
- 6.27 This option does not support the aim of achieving a more flexible and realistic charging system which takes account of the varying time spent by general PINS staff in assisting Planning Inspectors in conducting each individual examination or inquiry. Similarly, the way standard daily amounts are calculated are not compatible with the working practices of PINS, where planning officer and administrative input into examinations and inquiries are over a longer and more sustained period than Planning Inspectors. Assessing this option would have brought about the same costs as Option 2. Accordingly, only two options have been considered.

Summary and preferred option

- 6.28 For the services they provide in relation to local inquiries and qualifying procedures, the Welsh Ministers, or PINS acting on their behalf, are currently operating at a financial loss as the existing standard daily amounts do not represent true cost recovery and have not been updated since 2012. To ensure true cost recovery is achieved, option 2 is the preferred option. As set out in Table 6.1, the preferred option results in a transfer of costs from Welsh Government to the LPAs and development industry. As a result of full cost recovery from developers, there will be some benefit to the public purse.

Table 6.1: Total costs for the preferred option: Option 2

	Existing Costs	Additional Cost / Saving from legislation	Comments
Welsh Government	£79,200	+£79,200	Additional revenue
LPAs	£278,500	-£65,200	Additional cost
Development Industry	£164,750	-£14,000	Additional cost
Third Parties	N/A	N/A	N/A

Appendix A

Proposed figures based on qualifying procedures (total daily cost is annual salary divided by 220 working days)

Prescribed in regulations:

	Annual Salary	Daily Cost*	Overheads	Total	% time spent per plan	Daily Rate by %
Inspector	£81,331	£369	£139	£508*	100%	£508

Standard daily amounts published on PINS website:

Director	£104,681	£475	£159	£634	20%*	£126
SGL	£92,226	£419	£139	£558	5%*	£27
EO	£33,694	£153	£159	£312	25%*	£78
AO	£27,219	£123	£159	£282	22%*	£62
					TOTAL	£801

** Average time spent. Actual time spent will vary on a case-by-case basis.*

Proposed figures based on local inquiries (total daily cost is annual salary divided by 220 working days)

Prescribed in regulations:

	Annual Salary	Daily Cost*	Overheads	Total	% time spent per inquiry	Daily Rate by %
Inspector	£81,331	£369	£139	£508	100%	£508

Standard daily amounts published on PINS website:

Director	£104,681	£475	£159	£634	2%*	£12
SGL	£92,226	£419	£139	£558	2%*	£11
EO	£33,694	£153	£159	£312	50%*	£156
AO	£27,219	£123	£159	£282	42%*	£118
					TOTAL	£805

**Average time spent. Actual time spent will vary on a case-by-case basis.*