

Explanatory Memorandum to the Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment No. 2) 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 Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment No. 2) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Ken Skates
Cabinet Secretary for Economy and Infrastructure
8 May 2017

1. Description

- 1.1 The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment No.2) Regulations 2017 (the 2017 Regulations) amend the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (the 2012 Regulations).
- 1.2 The 2017 Regulations require that an application for listed building or conservation area consent must be accompanied by a heritage impact statement. A design and access statement will no longer be needed in conjunction with a listed building consent application.
- 1.3 The 2017 Regulations also prescribe when and how claims for compensation must be made under sections 28B and 44D of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act). They also make relevant transitional 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 28B and 44D of the 1990 Act (as inserted by sections 24(3) and 29(1) of the Historic Environment (Wales) Act 2016 (the 2016 Act) respectively), and in exercise of the powers conferred on the Secretary of State by sections 10, 28, 29, 74, 91 and 93 of the 1990 Act and now exercisable by the Welsh Ministers.
- 3.2 The functions of the Secretary of State under the 1990 Act (except the Treasury function under section 83(8)), 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). 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 93(3) of the 1990 Act this statutory instrument follows the negative procedure.

4. Purpose and intended effect of the legislation

Heritage Impact Statements

- 4.1 During the compilation of the evidence base for the 2016 Act, the effectiveness of the listed building consent process was assessed through research and stakeholder engagement.

- 4.2 The research¹ found that design and access statements, which the 2012 Regulations required for every listed building consent application, were generally poor in quality and did not provide sufficient justification for the proposed works. There was little evidence that design and access statements led to better considered proposals. In addition, an access statement was required for all applications for external works, irrespective of any impact on access. The report recommended their replacement with heritage impact statements.
- 4.3 The 2017 Regulations give effect to that recommendation. A heritage impact statement is the product of a structured heritage impact assessment process. This makes sure that the significance of the historic asset is taken into account when developing proposals for change. It is a core part of the design process, which tests whether the proposals for change are appropriate by assessing their impact on significance.
- 4.4 The 2017 Regulations set out the contents of a heritage impact statement. With regard to listed buildings, a heritage impact statement must contain:
- a description of the proposed works, including the design principles or concepts and a schedule of works;
 - an explanation of what the works intend to achieve and why they are desirable or necessary;
 - a statement explaining the special architectural or historic interest of the building and its significance;
 - an assessment of the impact of the works on the special architectural or historic interest of the building and its significance, including potential benefits or any harm;
 - a summary of the options considered, and why the proposals are preferred; and
 - a description of how issues relating to access have been dealt with.
- 4.5 A statement on access is not required for works which would affect access to, or within, any part of a listed building that is used as a private dwelling.
- 4.6 The heritage impact statement needs to be proportionate both to the significance of the building and to the degree of change proposed.
- 4.7 The requirements in the 2017 Regulations for a heritage impact statement for conservation area consent are slightly different, since consent is only required for the demolition of a building. The required contents are:
- a description of the proposed works;
 - an explanation of why demolition is desirable or necessary;

¹ http://cadw.gov.wales/docs/cadw/publications/Refining_the_Listed_Building_Consent_Process_EN.pdf

- a description of the contribution that the building makes to the character or appearance of the conservation area;
 - an assessment of the impact of the demolition works on the character or appearance of the conservation area; and
 - a summary of the options considered and why demolition is preferred.
- 4.8 Supporting guidance, *Heritage Impact Assessment in Wales*, has been prepared to provide advice about the heritage impact assessment process and the preparation of heritage impact statements.

Time and manner in which to claim compensation

- 4.9 The 2016 Act amended the 1990 Act to require the Welsh Ministers to consult when proposing to include or exclude a building from the list and place a building under consideration for listing under interim protection as if already listed. If the Welsh Ministers should decide not to list the building, section 28B of the 1990 Act allows compensation to be claimed for loss or damage arising from the interim protection in a time and manner to be prescribed by the Welsh Ministers.
- 4.10 The 2016 Act also amended the 1990 Act to allow a local planning authority to serve a temporary stop notices to halt unauthorised works to a listed building. Section 44D of the 1990 Act allows compensation to be claimed in a time and manner to be prescribed by the Welsh Ministers for loss or damage directly resulting from the service of a temporary stop if the works were not unauthorised or the notice is withdrawn otherwise than following the grant of listed building consent.
- 4.11 The 2012 Regulations already prescribe the time and manner in which certain compensation claims must be made. The regulations, in the main, require written claims to be made within six months of an action being taken (with the exception of claims for compensation by purchase notice on refusal or conditional grant of listed building consent).
- 4.12 In the interests of consistency, the procedures for compensation claims arising from interim protection or the service of temporary stop notices for listed buildings should be similar to those that are already in place. The 2017 Regulations therefore require such compensation claims to be submitted in writing within six months from the date of the decision that gave rise to the claim is made.

5. Consultation

- 5.1 Consultation was conducted between 11 July and 3 October 2016 on a package of proposed regulations and guidance.

Heritage impact statements

- 5.2 The consultation document asked four specific questions on heritage impact statements relevant to these regulations:
- Do you agree that a heritage impact statement should be required for every application for scheduled monument consent (unless otherwise

- agreed with the Welsh Ministers), listed building consent and conservation area consent?
- Do you agree that heritage impact statements should replace design and access statement for listed building consent applications?
 - Do you agree that an access statement should be required in any heritage impact statement where the proposed works would alter the means of access to or within a listed building?
 - Do you agree with the proposed contents for a heritage impact statement?
- 5.3 The proposals were supported strongly by between 84% and 86% of those who responded to the questions. However, many respondents qualified their support, particularly noting the need for proportionality with the scale and impact of the proposal. This issue is addressed in *Heritage Impact Assessment in Wales* — the guidance produced to support the regulations.

Time and manner in which to claim compensation

- 5.4 Consultees were also asked whether they agreed with the time period in which a compensation claim must be made. There was near universal support with 93% agreeing with the proposal. Two organisations representing owners advocated a longer period.
- 5.5 A summary report on 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 (RIA)

Claims for compensation

- 6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the provisions in the Regulations which prescribe the form and manner of compensation claims. A Regulatory Impact Assessment has not been prepared as these provisions will not impose any new costs or burdens but are instead intended to provide clarity and consistency in how people claim compensation in certain circumstances.

Heritage impact statements

- 6.2 We have identified two options for heritage impact statements:

Option 1 — Do nothing. Retain design and access statements for listed building consent applications

Description

- 6.3 This option would retain the requirement in the 2012 Regulations for a design and access statement to accompany a listed building consent application.
- 6.4 A design and access statement must explain the design principles and concept applied to the proposed works. At a minimum, it must explain those principles and concepts in relation to the following matters:
 - appearance,
 - environmental sustainability,
 - layout, and
 - scale.

It must also explain how the design principles and concepts take account of the special architectural or historic importance of the building, the features that justified its listing and the setting of the building.

For exterior works, the statement must also explain:

- the policy or approach to access;
- how any policies relating to access in the statutory development plan have been taken into account;
- how any specific issues that might affect access to the building have been addressed; and
- how features that ensure people's access to the building will be maintained.

- 6.5 No design and access statement is required for a conservation area consent application. The application does require details of the proposed works and related proposals. It must also provide an explanation of the proposed demolition work, including justification and analysis of the impact on the character or appearance of the area.

Costs

- 6.6 The retention of the existing requirements would not result in any direct changes to costs for either applicants or local planning authorities. However, research commissioned by the Welsh Government² found no evidence that the preparation of design and access statements has led to discernible improvements in design. Other research on listed building consents³ found that design and access statements are generally poor in quality, typically do not contain an appropriate level of justification for a proposal and appear to be irrelevant to many types of LBC applications. Many applicants confuse the information needed to inform a listed building consent application with the minimum standards of information

² Welsh Government, Review of Design and Access Statements in Wales, November 2013
<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/review-of-design-and-access-statements-in-wales/?lang=en>

³ http://cadw.gov.wales/docs/cadw/publications/Refining_the_Listed_Building_Consent_Process_EN.pdf

required in the general development control system.

- 6.7 In 2013 the Department for Communities and Local Government in England estimated the cost of preparing a design and access statement for a minor development was £500⁴. There is no specific analysis for the cost of preparing a design and access statement as part of a listed building consent application, but we would expect the cost of a straightforward statement to be similar to that for a minor development. Design and access statements to accompany larger and more complex listed building applications would be more resource intensive to prepare.
- 6.8 A design and access statement is often perceived as a 'box-ticking' exercise rather than a useful tool to identify and assess the potential impact of a proposed change and adapt the proposal to find the best way to meet the needs of the applicant and the building. In practice, conservation officers may need to seek further information from the applicant, sometimes repeatedly, in order to obtain sufficient evidence to justify a proposed change.
- 6.9 Research commissioned by the Welsh Government⁵ included information from 20 of the 25 local planning authorities. These authorities received 642 listed building consent applications in 2012/2013. Amongst those authorities that collated the information by listing grade, some 90% of applications involved grade II listed buildings.
- 6.10 The same local planning authorities received 116 applications for conservation area consent over the same period. Of these only 19, or 16%, were not accompanied by a planning application. Planning applications within conservation areas need to be accompanied by a design and access statement.

Benefits

- 6.11 The design and access statement process has been in place for over four years and is now familiar in the professional sector. The articulation of the design principles and concepts applied to a proposal for works to a listed building should help to inform its development and aid the local planning authority's consideration of the application.

Option 2 – Replace design and access statements with heritage impact statements

Description

- 6.12 This option would replace the requirement for a design and access statement with a process specifically designed for historic assets. A heritage impact statement would include:

⁴http://www.legislation.gov.uk/ukia/2013/148/pdfs/ukia_20130148_en.pdf

⁵http://cadw.gov.wales/docs/cadw/publications/Refining_the_Listed_Building_Consent_Process_EN.pdf

- the design principles and concepts for the works;
- the reason for the works, explaining what they are intended to achieve and why they are desirable or necessary;
- a description of the special architectural or historic interest of the building and its significance;
- an assessment of the impact of the works on the special architectural or historic interest of the building and its significance; and
- a summary of the options and the reasons for the preferred approach.

6.13 The detail required would be proportionate to the significance of the building and the degree of proposed change. An access statement would only be required for works that would have an impact on access and not for any works to a building, or part of a building, used as a private dwelling.

6.14 The requirements for conservation areas would be similar, but would concentrate on why demolition is necessary or desirable, and the impact of the proposed works on the character and appearance of the conservation area.

Costs

6.15 This option would change the emphasis of the statement accompanying a listed building consent application by focusing it on an assessment of the impact of proposals for change on the significance of the listed building. Although it will employ material that would previously have been included in a design and access statement, it will be specifically directed to providing information required for the proper consideration of a listed building consent application by a local planning authority.

6.16 Once the general concepts are grasped, it is not envisaged that a listed building consent application with a heritage impact statement will be any more onerous than one with a design and access statement. This was supported in some of the responses to the consultation. Organisations representing owners suggested that heritage impact statements would be more helpful than design and access statements for both applicants and local authorities. Respondents also suggested that emphasis in the guidance on the need for proportionality based on the significance of the asset and the degree of the proposed change would result in a more efficient and effective process. Accordingly, the supporting guidance has been amended to stress this point. Simple listed building consent cases would generally require only a short statement.

6.17 Whereas until now access statements have been required for validation purposes for any listed building consent application for external works, under the heritage impact statement regime they will not be needed where access is unaffected or the listed building is a private dwelling. This will spare many applicants the task of preparing unnecessary access information and authorities the need to validate and process it.

6.18 There are not likely to be substantive changes in costs for either applicants or the local authorities. Just as with design and access statements, the cost of preparing a heritage impact statement would vary dependent on the complexity of the proposed works. It is estimated that the cost of a heritage impact statement for a relatively straightforward listed building consent application would be similar to a design and access statement for a minor development, in the region of £500. There may be small indirect savings for both since a heritage impact statement will provide at the outset of the process the information needed for the speedy determination of a listed consent application and the number of applications that would need to be accompanied by an access statement will be reduced. However, in the short term, there may be additional requirements on local planning authorities to explain the new procedures for heritage impact statements to applicants, and to take part in informal mentoring/training with Cadw inspectors.

6.19 There are nearly 500 conservation areas in Wales and conservation area consent is required for the demolition of a building in a conservation area. There is no research relating to the current cost of making an application for conservation area consent. However, research for the Department for Communities and Local Government in 2009⁶ indicated that the average cost of making a householder planning or change of use application was around £1,200. A conservation area consent application is for demolition only and requires details of :

- the proposal,
- an explanation of the proposed demolition work including its justification, and
- an assessment of the building's contribution to the character or appearance of the area.

In determining conservation area consent applications, local planning authorities must make a presumption in favour of retaining a building that makes a positive contribution to the character or appearance of a conservation area.

6.20 A heritage impact statement for a conservation area consent application will require the same information but set out in a logical and structured way, enabling local planning authorities to make more authoritative decisions.

6.21 Generally the introduction of heritage impact statements may bring some small additional costs for the Welsh Government, arising, for instance, from the provision of guidance and information to applicants and agents on an ad hoc basis. Any additional cost will be met from existing resources.

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<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/benchmarkingcostsapplication.pdf>

6.22 In addition, if there is sufficient demand from local planning authorities, short training sessions will be organised to help them understand and apply the heritage impact assessment process. The Welsh Government would incur costs of less than £1,000 in preparing and delivering two half-day sessions for local planning authorities. The estimated cost for a local planning authority of sending an officer to a half day training session would be less than £150; if all local planning authorities sent one attendee then the cost would be in the region of £3,750.

Benefits

- 6.23 The introduction of heritage impact statements was recommended following the research on the listed building consent process and was widely supported at the consultation stage. Heritage impact assessment is already increasingly being used by conservation professionals in the preparation of designated asset consent applications.
- 6.24 The structured assessment process ensures that the significance of a historic asset is taken into account in the development and design of a proposal for works. It tests whether proposals for change to a historic asset are appropriate by assessing their impact on its significance.
- 6.25 The nature of the process means that a heritage impact statement will be proportionate to the significance of the historic asset and the degree of change proposed.
- 6.26 Requiring heritage impact statements in listed building and conservation area consent applications should help local planning authorities to make authoritative and timely decisions.

Summary and preferred option

- 6.27 Replacing design and access statements with heritage impact statements will improve the quality of applications for listed building and conservation area consent. As is made clear in the supporting guidance, *Heritage Impact Assessment in Wales*, the information required in a heritage impact statement will be proportionate to a development's impact on the significance and character of a historic asset. By synthesising a structured assessment of the impact of proposed works, a heritage impact statement will provide the foundation for well-considered and well-supported application for change to a historic asset. This will reduce the need for local planning authorities to seek further information from applicants and the time taken to determine applications. While this option will require some additional costs in guidance and training when the option is introduced, it is anticipated that the process will be cost neutral for listed building consent applications, and possibly a small cost for conservation area consent. It will however, improve the sustainable management of change in the historic environment by introducing the formal and explicit consideration of the impact of works on significance into the listed building and conservation area consent processes. It will

also ensure that access issues are fully considered in appropriate circumstances.

7. The Competition Filter Test

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No