

Explanatory Memorandum to the Listed Buildings (Urgent Works) (Interest Rate on Expenses) (Wales) Order 2017

This Explanatory Memorandum has been prepared by the Department of Economy, Science 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 Listed Buildings (Urgent Works) (Interest Rate on Expenses) (Wales) Order 2017.

Ken Skates
Cabinet Secretary for Economy and Infrastructure
8 May 2017

1. Description

1.1 The Listed Buildings (Urgent Works) (Interest Rate on Expenses) (Wales) Order 2017 (the 2017 Order) prescribes the rate of interest that a local authority or the Welsh Ministers may levy on expenses incurred during urgent works to preserve a listed building under section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act).

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

2.1 None.

3. Legislative background

3.1 The Welsh Ministers make this Order in exercise of the powers conferred on them by sections 55(5B) of the 1990 Act (inserted by section 30(6) of the Historic Environment (Wales) Act 2016 (the 2016 Act)) and 93(4) of that Act (as amended by section 40(6) of the 2016 Act).

3.2 In accordance with section 93(5) of the 1990 Act (as amended by section 40(7) of the 2016 Act), this statutory instrument follows the negative procedure.

4. Purpose and intended effect of the legislation

4.1 Under sections 54 and 55 of the 1990 Act, a local authority or the Welsh Ministers may execute works that appear to them urgently necessary for the preservation of a listed building and recover costs incurred.

4.2 Local authorities and the Welsh Ministers have infrequently used these urgent works powers, in part because of the risk of difficulties in recovering their costs. Costs can vary considerably depending on the nature of the urgent works. In some cases, the works will be relatively minor, such as fencing a building against vandalism or making the roof weather tight. In other instances, the works may be substantial. Denbighshire County Council, for example, sought to recover nearly £1,000,000 for major structural repairs undertaken during urgent works to the North Wales Hospital.

4.3 In order to reduce the financial risks for local authorities and the Welsh Ministers, new section 55(5B) of the 1990 Act (as inserted by section 30(6) of the 2016 Act) provides that expenses arising from urgent works will carry interest at a rate prescribed by order of the Welsh Ministers. Interest will be carried until all sums due are recovered and the expenses and any interest will be recoverable as a debt.

4.4 New sections 55(5C) and (5D) of the 1990 Act (also inserted by section 30(6) of the 2016 Act) set out that such expenses and any interest are, until recovery, a charge on the land on which the building stands. That charge is a legal charge which is a local land charge.

4.5 The 2017 Order sets an interest rate of 2% above Bank of England Base Rate on expenses arising from urgent works. This is not intended to be punitive, but a rate that will be fair to owners and also protect local planning authorities and the Welsh Ministers from financial loss.

4.6 The Bank of England Base Rate plus 2% rate benefits from being both transparent and commonly understood. On 1 March 2017, the base rate was 0.25% resulting in an annual interest charge of 2.25%.

4.7 The appropriateness of the interest rate will be kept under review.

5. Consultation

5.1 Consultation was conducted between 11 July and 3 October 2016 on a package of proposed statutory instruments and guidance. The consultation document asked specifically for views on whether the interest rate in the regulations should be set at the Bank of England Base Rate plus 2%.

5.2 A large majority — 81% of the 27 respondents who expressed a view — supported the proposal, including 8 local authorities. Five consultees who opposed the proposal were concerned that the rate did not present a sufficient deterrent; it needed to be high enough to ensure that it did not create a perverse incentive for owners by providing a cheap source of borrowing.

5.3 However, there is no evidence that owners deliberately neglect their listed buildings in order to encourage local authorities to use their statutory powers to carry out urgent works. The new ability to charge interest on the costs of works carried out will surely present an additional disincentive.

5.4 Alternative arrangements based on local authority borrowing arrangements were considered. The Welsh Local Government Association suggested that the rate should be the higher of the rate consulted upon or the Public Works Loan Board 20 year EIP (equal instalments of principal) rate plus 1%. The EIP rate is not the lowest rate available to local authorities but lower rates may not always be available. The EIP rate changes according to the length of the loan, so it would not be linked to the period of the loan or the duration of the works themselves. On 1 March 2017, the rates were:

1 year	5 years	10 years	20 years
1.01%	1.19%	1.53%	2.21%
(+1% = 2.01%)	(+1% = 2.19%)	(+1% = 2.53%)	(+1% = 3.21%)

5.5 Comparisons with commercial lending are problematic, as the interest rate on a commercial loan will vary according to circumstances, including the applicant's financial status, the amount and duration of the loan and whether the borrowing is secured against a financial asset. On 1 March 2017, the cheapest loan of up to £199,999, secured against a property, carried interest of around 3.83% per annum. Smaller (£7,500) personal loans were available at 3.9% APR.

6. Regulatory Impact Assessment

6.1 A Regulatory Impact Assessment (RIA) has not been prepared to accompany this Order since the interest rate will be consistent across all cases and be charged on sums that will vary according to the individual circumstances of each case. The impacts of the changes to urgent works powers were additionally considered in the RIA submitted in support of the Historic Environment (Wales) Bill and a copy of the assessment may be obtained from the Historic Environment Service (Cadw), Plas Carew, Unit 5/7 Cefn Coed, Parc Nantgarw, Cardiff, CF15 7QQ.