



Isle of Man

Ellan Vannin

SD No.2017/0327

**WAR MEMORIALS (PLANNING) ORDER
2017**



WAR MEMORIALS (PLANNING) ORDER 2017

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Statutory Document No. 2017/0327



War Memorials Act 2016

WAR MEMORIALS (PLANNING) ORDER 2017¹

Approved by Tynwald: 22 November 2017
Coming into Operation: 1 December 2017

The Council of Ministers makes the following Order under section 9 of the War Memorials Act 2016.

PART 1 – INTRODUCTION

1 Title

This Order is the War Memorials (Planning) Order 2017.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 December 2017.

3 Interpretation

In this Order –

- (a) “TCPA” means the Town and Country Planning Act 1999; and
- (b) a reference without more –
 - (i) to a numbered section is a reference to the section of TCPA so numbered; and
 - (ii) to “Part 3”, “Part 4” or “Part 5” is a reference to that Part of TCPA; and
- (c) “the Register” means the Register of War Memorials (and “registered shall be construed accordingly).

PART 2 – APPLICATION OF TCPA

DIVISION 1 – APPLICATION OF PART 3

4 Part 3 applied

Part 3, other than sections 14A and 18 to 20, applies to a war memorial which is, or forms part of, or is affixed to, a building as that Part applies to buildings, subject to the following provisions of this Division.

5 Entering details in the War Memorials Register: s. 14 modified

- (1) Section 14 is modified as follows.
- (2) Omit subsection (1).
- (3) In subsection (2) –
 - (a) in the opening words –
 - (i) for “a building” and “the building” respectively substitute “a war memorial” and “the memorial”;
 - (ii) for “the Department” substitute “the Council of Ministers”;
 - (b) in paragraph (a) for “its exterior” substitute ~~“it”~~;
 - (c) in paragraph (b) for “the building” substitute “the memorial”.
- (4) In subsection (4) for “the Department” substitute ~~“the Council of Ministers”~~.
- (5) In consequence of the preceding modifications for the heading to the section substitute “**Entering details in the War Memorials Register**”.

6 The Register: Schedule 2 modified

- (1) Schedule 2 is modified as follows.
- (2) Throughout the Schedule –
 - (a) for “the Department” substitute “the Council of Ministers”
 - (b) for “building” (except as otherwise provided) substitute “war memorial”.
- (3) For the heading to the Schedule substitute “The War Memorials Register”.
- (4) In paragraph 1 for the words following “shall consult” substitute “the War Memorials Committee and such other persons as it considers appropriate”.
- (5) In paragraph 2(2) –
 - (a) in paragraph (a) for “the prescribed period” substitute “three months”;

- (b) in paragraph (b) for “the prescribed period” substitute “ten years”.
- (6) After paragraph 2 insert—
- “Delineation of war memorial*
- 2A The Council of Ministers in designating a war memorial must delineate the curtilage of a war memorial to which the provisions of the Act apply.”.
- (7) In paragraph 3 for “Regulations shall” substitute “Directions given by the Council of Ministers must” (and the italic cross-heading accordingly becomes “Directions”).

7 Control of works affecting a registered war memorial: s. 15 amended

- (1) Section 15 is modified as follows,
- (2) Throughout the section —
- (a) for “registered building” substitute **“registered war memorial”**;
- and
- (b) for “Department” substitute **“Council of Ministers”**.
- This is subject to any specific provision below.
- (a) In subsection (1)(b) for “alteration or extension” substitute **“alteration, relocation or extension”**,
- (b) omit all the words following “character”.
- (3) In subsection (5) for “must make regulations” substitute **“may make regulations”**.

8 Conditions of war memorial consent: Schedule 3 modified

- (1) Schedule 3 (which sets out conditions subject to which registered building consent may be granted) is modified as follows.
- (2) The heading to the Schedule becomes **“Conditions of Consent for the Creation of a Registered War Memorial”**.
- (3) In paragraph 1—
- (a) for subparagraph (1) substitute—
- “(1) This Schedule specifies the procedure for the imposition of conditions under section 5(5) of the War Memorials Act 2016.”**;
- (b) in subparagraph (2) —
- (i) for the words preceding “may be granted” substitute **“The conditions subject to which consent for the creation of a war memorial”**;

- (ii) in head (a) for “the building, either as part of it, or after severance from it” substitute “the proposed war memorial, either as part of the building of which it forms part or to which it is attached or after severance from the building”;
 - (iii) in head (b) for “the building” substitute “the building or the proposed war memorial”;
 - (iv) in head (c) —
 - (A) for “the reconstruction of the building or any part of it” substitute “the reconstruction of the building or the proposed war memorial, or any part of the building or war memorial”; and
 - (B) omit “and with such alterations of the interior of the building”;
 - (c) in subparagraph (3) for “registered building consent” and “the Department” substitute “war memorial consent” and “the Council of Ministers” respectively.
- (4) In paragraph 2 —
- (a) for “registered building consent” substitute “war memorial consent”;
 - (b) for “registered building” substitute “war memorial”
 - (c) for “demolition” substitute “demolition, relocation or replacement”
- (5) In paragraph 3 for “registered building”, “registered building consent” and “the Department” substitute “registered war memorial”, “war memorial consent” and “the Council of Ministers” respectively.

9 Supplementary provisions: s. 16 modified

- (1) Section 16 is modified as follows.
- (2) Omit subsections (1) and (2).
- (3) For subsection (3) substitute —
 - “ (3) In considering —
 - (a) whether to grant planning approval for development which affects a registered war memorial or its setting, or
 - (b) whether to grant registered war memorial consent for any works,
 the Department or the Council of Ministers (as the case requires) must have special regard to the desirability of preserving the war memorial and its setting and the need for compelling justification for any alteration to the war memorial or its setting or any

features of special architectural or historic interest which it possesses.”.

10 Preservation notices: s. 17 modified

- (1) Section 17 is modified as follows.
- (2) Subject to specific provision below, throughout the section (including the heading)—
 - (a) for “the Department” substitute “the Council of Ministers”;
 - (b) for “building” substitute “war memorial”; and
 - (c) for references to the owner and the occupier of the building substitute references to the owner of the war memorial and the owner and occupier of the land upon which it stands or of which it forms a part.
- (3) For subsections (1) and (2) substitute —
 - (1) If it appears to the Council of Ministers that an object or structure which is not a registered war memorial—
 - (a) ought to be registered under section 4 of the *War Memorials Act 2016*; and
 - (b) is in danger of alteration, demolition or destruction, it may serve on the owner of the object or structure and the occupier of the land on which it is situate a notice (“**a war memorial preservation notice**”).”.
 - (2) A war memorial preservation notice must —
 - (a) state that the object or structure appears to the Council of Ministers ought to be registered as a war memorial and that the Council of Ministers is considering entering it in the register; and
 - (b) explain the effect of subsections (3), (4) and (6).
- (4) For subsection (3)(a) substitute —
 - (a) come into operation as soon as it has been served on the owner of the object or structure to which it relates, and the owner and occupier of the land upon which that object or structure is situate;”.
- (5) In subsection (5) for “some object on the building”, substitute “some object near to the war memorial, or if not possible, on the war memorial”

DIVISION 2 – APPLICATION OF PART 4

11 Enforcement of control: provisions of Part 4 modified

- (1) Part 4 is modified in accordance with this Division.

- (2) Sections 33 and 34 are omitted.

12 Control of advertisements: s. 22 modified

For section 22 there is substituted —

22 Prohibition of commercial advertising

- (1) A person commits an offence if he or she displays on, or in the immediate vicinity of, a war memorial an advertisement for —
- (a) any professional, commercial or industrial undertaking; or
 - (b) any public restaurant, licensed premises or place of entertainment.
- For the sake of clarity “advertising” does not include a plaque in the immediate vicinity of a war memorial listing organisations who have sponsored the installation or restoration of a war memorial.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £5,000.
- (3) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence. **22**

13 Breach of planning control: s. 23 modified

- (1) Section 23 is modified as follows.
- (2) In subsection (1)—
- (a) in paragraph (a) for “planning approval” substitute “war memorial consent”
 - (b) in paragraph (b) for the words following “subject to which” substitute “consent under section 5 of the War Memorials Act 2016 was granted”.
- (3) For subsection (2) substitute —
- 23**(2) A person who commences or carries out any development in relation to a war memorial in breach of planning control is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000. **23**.

14 Breach of conditions: s. 23A modified

- (1) Section 23A is modified as follows.
- (2) For subsection (1) substitute —

- (1) A person who fails to comply with, or causes or permits another to fail to comply with any condition subject to which consent under section 5 of the War Memorials Act 2015 was granted is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.
- (3) In subsection (2) for “comes into operation” substitute “is applied by section 8 of the War Memorials Act 2015”
- (4) Omit subsection (10).

15 Certificate of lawfulness of use or development: s. 24 modified

- (1) Section 24 is modified as follows.
- (2) In subsection (1) -
 - (a) in the opening words, for the words preceding “a certificate” substitute “The Council of Ministers may issue”;
 - (b) omit paragraphs (a) and (b);
 - (c) in paragraph (c) and (d) after “land” insert “comprising a war memorial or on which a war memorial stands”;
 - (d) after paragraph (d) omit “or” and insert –
 - (da) any adaptations or adjustments made, or proposed to be made, to a war memorial are lawful; or
 - (db) any relocation or proposed relation of a war memorial is lawful; and
 - (e) in paragraph (e) for the words following “subject to which” substitute “consent under section 5 of the War Memorials Act 2016 was granted is lawful”.
- (3) Omit subsection (2).
- (4) In subsection (3) for “land” substitute “war memorial”.
- (5) In subsection (5) for “Department” substitute “Council of Ministers”

16 Power to require information about activities on land: s. 25 modified

- (1) Section 25 is modified as follows.
- (2) In subsection (1) –
 - (a) in the opening words, for “the Department” substitute “the Council of Ministers” and for “land” substitute “war memorial”;
 - (b) in paragraph (b) –
 - (i) in subparagraphs (i) and (ii) after “land” insert “which may affect a war memorial”;
 - (ii) at the end of subparagraph (i) omit “and”;

- (iii) after subparagraph (ii) insert –
- (iii) the location, manner of storage and condition of a war memorial; and
 - (iv) the progress of any works relating to a war memorial;▫
- (3) In subsection (2) –
- (a) in paragraphs (a) to (c) and (d) for “the land” wherever occurring substitute ▫the war memorial▫;
 - (b) after paragraph (c) insert –
 - (ca) to give the name and address whom he knows to be responsible for the maintenance or storage of the war memorial;▫;
 - (c) in paragraph (d) after “planning approval” wherever it occurs insert “or war memorial consent”
 - (d) in paragraph (e) for “the land” in both places substitute ▫the war memorial or the land on which it is situate▫; and
 - (e) at the end insert –
 - (f) to account for the location, storage and condition of a war memorial; and
 - (g) to give an account of the progress of any works carried out or proposed to be carried out in respect of a war memorial.▫.

17 Enforcement notice: s. 26 modified

- (1) Section 26 is modified as follows.
- (2) In subsection (2) for the words from “is then the owner of the land” to the end of the subsection substitute –
- is then the owner of –
 - (i) the war memorial, or
 - (ii) the land on which it is situate.
 (as the case requires) in respect of which the notice was served, is guilty of an offence.▫.
- (3) In subsection (4) at the end insert “and any distress caused to the community”

18 Stop notice: s. 27 modified

- (1) Section 27 is modified as follows.
- (2) Throughout the section for “Department” substitute ▫Council of Ministers”.

- (3) In subsection (1) for “on any land” (in each place) substitute **“in respect of any war memorial”**.
- (4) In subsection (3)—
 - (a) at the end of paragraph (a) insert “or” and
 - (b) omit paragraph (c) (and the word “or” immediately preceding it).

19 Enforcement of agreements: s. 28 modified

In section 28 for “the Department” wherever occurring substitute **“the Council of Ministers”**.

20 Works affecting registered war memorial: s. 29 modified

- (1) Section 29 is modified as follows.
- (2) Throughout the section for “registered building” wherever occurring except in the expression “registered building consent” substitute **“registered war memorial”**.
- (3) In subsection (1)(b) —
 - (a) after “alteration “ insert “, movement”;
 - (b) for the words following “character as a” substitute **“war memorial”**.
- (4) After subsection (1) insert —

“(1A) For the purposes of subsection (1)(b) “movement” —	<ol style="list-style-type: none"> (a) is the long term or permanent removal of a war memorial from the place recorded as its location in the War Memorials Register;
	but excludes
	<ol style="list-style-type: none"> (b) short-term removal from that place (for example for ceremonial use or maintenance). ”
- (5) In subsection (4) —
 - (a) for “building” substitute **“war memorial”**; and
 - (b) for “the Department” substitute **“the Council of Ministers”**.

21 Acts likely to damage registered war memorial: s.30 modified

- (1) Section 30 is modified as follows.
- (2) In subsection (1) and in the heading to the section for “building” substitute **“war memorial”**.
- (3) In subsection (2) —
 - (a) in paragraph (a) at the end insert **“(as it applies generally)”**;

- (b) in paragraph (b) for “planning approval” substitute **“the Council of Ministers”**; and
- (c) in paragraph (c) for “building” substitute **“war memorial”**.

22 Registered war memorial enforcement notice: s.31 modified

- (1) Section 31 is modified as follows.
- (2) Throughout the section (including the section heading) for “building” substitute **“war memorial”**.

23 Urgent works: s.32 modified

- (1) Section 32 is modified as follows.
- (2) In subsection (1) —
 - (a) for “the Department” substitute **“the Council of Ministers”**; and
 - (b) for “registered building” substitute **“war memorial”**; and
 - (c) omit subparagraph (b).

24 Schedule 6 modified

- (1) Schedule 6 is modified as follows.
- (2) In Schedule 6 —
 - (a) for “the Department” (wherever occurring) substitute **“the Council of Ministers”**;
 - (b) for “building” substitute “war memorial”
 - (c) omit paragraph 3(1)(b)
 - (d) at the end of paragraph 3(1)(e), add “in which case the owner shall have been deemed to have applied for the war memorial to be vested in a local authority in accordance with section 7(1) of the War Memorials Act 2016.”.

25 Application to other buildings: s. 34 omitted

Omit section 34.

26 Enforcement of control of advertisements: s.35 modified

- (1) Section 35 is modified as follows.
- (2) In subsection (1) —
 - (a) for the words preceding paragraph (a) substitute —
“The Council of Ministers may by direction in writing require—”.
 - (b) in paragraphs (a) and (b) for “regulations” substitute “directions”.
- (3) In subsection (2) for “regulations” substitute **“a direction”**.

- (4) In subsection (3) –
 - (a) for “any provision of regulations under subsection (1) or (2)” substitute ~~“any provision of a direction under subsection (1)”~~;
 - (b) for “in contravention of regulations under section 22” substitute ~~“in contravention of section 22”~~.

27 Power to remove or obliterate placards and posters: s. 36 modified

- (1) Section 36 is modified as follows.
- (2) For “the Department” (wherever occurring) substitute ~~“the Council of Ministers”~~.
- (3) In subsection (1) delete the words “regulations under”
- (4) In subsection (2) for “a building” substitute ~~“a dwelling”~~.

28 Injunctions: s. 37 modified

- (1) Section 37 is modified as follows.
- (2) In subsection (1) –
 - (a) for “the Department” substitute “the Council of Ministers”; and
 - (b) omit the parenthetic words of description (and the associated parentheses) in paragraph (b).
- (3) In subsection (2)(b) for “registered building” substitute “registered war memorial”.

29 Restrictions on proceedings: section 38 modified

- (1) Section 38 is modified as follows.
- (2) In subsection (1) for the words following “except” substitute “by the Attorney General”.
- (3) In subsections (2)(a) and (3) for “the prosecutor” substitute “the Attorney General”.

30 Additional powers on conviction: section 39A modified

- (1) Section 39A is modified as follows.
- (2) In subsection (1) for “(after it comes into operation)” substitute “(after it is applied to war memorials)”.
- (3) In subsection (3) after “a development” insert “affecting a registered war memorial”.
- (4) In subsection (4) –
 - (a) for “registered building”, wherever occurring substitute “registered war memorial”;

- (b) omit “as a building of special architectural or historic interest”;
 - (c) in paragraph (a) after “building” insert “or war memorial”;
 - (d) in paragraph (b) for “without registered building consent” substitute “without war memorial consent”;
 - (e) in paragraph (c) –
 - (i) after “building” insert “or war memorial”;
 - (ii) for “registered building consent” substitute “war memorial consent”.
- (5) In subsections (7) and (8) for “The Department” substitute “The Council of Ministers”.

DIVISION 3 – APPLICATION OF PART 5

31 Miscellaneous provisions: Part 5 modified

- (1) Part 5 is modified in accordance with this Division.
- (2) There are omitted –
 - (a) section 43A (consultation between relevant Departments);
 - (b) section 44 (Tynwald control of orders and regulations);
 - (c) section 46 (transitional provisions, amendments and repeals).

32 Involvement of outside organisations in planning:

- (1) Section 40 is modified as follows.
- (2) For subsection (1) substitute –
 - “ (1) The War Memorials Preservation Committee (“the Committee”), originally established by resolution of Tynwald in October 2008 as the Isle of Man Government Preservation of War Memorials Committee, continues in being.”.
- (3) In subsection (2) –
 - (a) for “the consultative body” and “the said body” substitute “the Committee”; and
 - (b) after “under this Act” insert “in relation to war memorials”.
- (4) In subsection (3) –
 - (a) in paragraph for “the environment” substitute “war memorials”;
 - (b) omit paragraph (b) and the word “and” immediately preceding it.
- (5) After subsection (3) insert –
 - (4) In exercising any function under this Act in relation to war memorials the Committee and the Council of Ministers must have regard to any

representations made by organisations designated under subsection (3). **22**.

33 Records of applications: s. 41 substituted

For section 41 substitute —

41 Records of applications etc

- (1) In addition to the War Memorials Register, the Council of Ministers shall cause to be retained copies of any applications, certificates, directions or submitted to them or issued by them.
- (2) The War Memorials Register and copies of documents retained under subsection (1) shall be available for inspection by any person at all reasonable hours.
- (3) Both the War Memorials Register and any document required to be kept by virtue of this section may be kept in electronic form; and where it is so kept, the requirement of subsection (2) is satisfied if the Council of Ministers causes to be made available in visible and legible form any part of it which a person wishes to inspect. **22**.

34 Computerisation and microfilming of records: s. 42 modified

- (1) Section 42 is modified as follows.
- (2) Throughout the section for “a relevant Department”, “that Department” or “the Department” substitute “the Council of Ministers”.

35 Rights of entry: s. 43 modified

- (1) Section 43 is modified as follows.
- (2) Throughout the section for “a relevant Department” or “the relevant Department” substitute **43** the Council of Ministers **22**.
- (3) Throughout the section for “land” and “building” substitute “war memorial” as the context requires.
- (4) In section 1(a) for “survey under section 1” substitute “condition survey”.

36 Interpretation: s. 45 modified

- (1) Section 45 is modified as follows.
- (2) In subsection (1)
 - (a) for the definition of “the register” substitute—
“**the register**” means the War Memorials Register;

- (b) omit the definitions of “registered building”, “registered building consent” and “registered building enforcement notice”; and
- (c) at the appropriate alphabetical points insert —

“**registered**” means registered in the War Memorials Register;

“**war memorial**” means any land or fixture falling within the definition of “war memorial” in section 3 of the War Memorials Act 2016;

“**war memorial preservation notice**”: see section 17(1); and

“**War Memorials Register**”: see section 14.

(3) For subsection (2) substitute—

❏ (2) Any requirement under this Act that the Committee or the Cabinet Office publish any document is complied with if —

- (a) notice of it is given in one or more newspapers published and circulating in the Island; and
- (b) a copy of it is made available for public inspection, free of charge, on a website maintained by or on behalf of the body publishing it. ❏.

MADE 2ND NOVEMBER 2017

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.