

# HISTORIC ENVIRONMENT (WALES) ACT 2023

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 — Supplementary provision about buildings of special interest and conservation areas**

##### *Chapter 1 — Exercise of functions by planning authorities and other local authorities*

##### *Section 167 — Fees and charges for exercising functions*

634. **Section 167** allows the Welsh Ministers to make regulations to require the payment of a fee or charge to a planning authority for performing any of its functions, or anything connected with those functions, under Parts 3, 4, 5 or 7 of the Act. Subsection (2) contains a non-exhaustive list of the matters that may be covered by any regulations, for example, how the amount which may be charged is to be calculated, who is liable to pay a fee and when the fee is payable.
635. Subsection (3) provides that, where the regulations allow for a planning authority to calculate the amount of the fees or charges, the income that the planning authority collects from those charges must not be higher than the cost of performing the functions.

##### *Section 168 — Arrangements for exercising functions in relation to applications*

636. **Section 168(1)** applies sections 319ZA to 319ZD of the 1990 Planning Act to the exercise of a planning authority's functions in relation to applications for listed building or conservation area consent, variation of a consent or approval of details as required as part of a condition of a consent. Sections 319ZA to 319ZD make provision for planning authorities' functions to be discharged by committees, subcommittees or officers, and set the requirements for the size and composition of the committees.
637. Subsection (2) prevents challenges to decisions on the grounds that they should have been made by another planning authority.

##### *Section 169 — Arrangements for obtaining specialist advice*

638. **Section 169** enables the Welsh Ministers to direct a planning authority to submit for their approval the arrangements that the authority has in place for obtaining specialist advice in connection with some of its functions under the Act. The relevant functions are set out in subsection (6) and are those where an understanding of the significance and special architectural or historic interest of a building is required in order for the planning authority to undertake its functions effectively.
639. For example, when considering an application for listed building consent, a planning authority has a duty to have special regard to the desirability of preserving the listed building, its setting and any features of special architectural or historic interest the building possesses (section 96(2)). Due to the specialist nature of works to a listed

building, the availability of specialist advice is essential when determining listed building consent applications.

640. **Section 169(3)** provides that if the Welsh Ministers are not satisfied with the arrangements that one planning authority (authority A) proposes to make to receive specialist advice, they can direct another planning authority (authority B) to exercise any of the relevant functions of authority A, or to make an officer from authority B available to provide specialist advice to authority A.

***Section 171 — Contributions towards expenditure by local authorities***

641. **Section 171** provides that any local authority or statutory undertaker may contribute towards expenditure incurred by a planning authority or other local authority in, or in connection with, the exercise of certain functions under Part 3 (including functions when that Part is applied to a conservation area by section 163). Such a power is likely to be exercised when a planning authority's exercise of a function benefits another authority or statutory undertaker, who could contribute to the costs incurred in recognition of that fact.
642. Subsection (3) gives the Welsh Ministers a power to make or require a contribution to the cost of compensation payable by a planning authority or other local authority, in consequence of anything done under Chapters 1 to 4 of Part 3 — including anything done under Chapters 2 and 4 as applied to conservation areas by section 163.
643. In the first instance, the Welsh Ministers may contribute to the cost of compensation if the compensation arises as a result of something done wholly or partly in the interest of a service provided by the Welsh Ministers. The Welsh Ministers may also require another local authority to make a reasonable contribution towards a compensation payment if that authority has benefitted from the action that gave rise to the compensation.
644. Subsections (4) to (6) provide for compensation on the termination of a listed building partnership agreement or a provision of such an agreement. While more than one planning authority may be party to an agreement, any compensation will be paid by the authority that makes the termination order under section 115. The Welsh Ministers may, however, direct any of the other authorities party to such an agreement to reimburse the authority that paid the compensation, in whole or in part. The Welsh Ministers may only make such a direction after consulting with all of the planning authorities that are or were parties to the agreement.