

# 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 2 — Proceedings before the Welsh Ministers*

##### *Section 173 — Determination of appeal by appointed person*

##### *Schedule 12 — Determination of appeal by appointed person or the Welsh Ministers*

645. [Section 173](#) provides that appeals of a type specified in subsection (2) are to be determined by a person appointed by the Welsh Ministers, instead of by the Welsh Ministers themselves. Ordinarily, the appointed person will be an inspector of Planning and Environment Decisions Wales.
646. Regulations may be made under section 173(3)(a) which would require the Welsh Ministers to determine certain categories of appeals instead of an appointed person, for example those for Grade I listed buildings. Case-specific directions can also be made under section 173(3)(b) which would recover a specific appeal to be determined by the Welsh Ministers. Comparable powers provided by the 1990 Listed Buildings Act have rarely been used, and usually only if the appeal is of national interest where the result may lead to a substantive change in policy.
647. [Schedule 12](#) makes additional provisions about the powers and duties of the appointed person and the administration of directions under section 173(3)(b).
648. [Paragraph 2](#) of the Schedule provides that an appointed person has the same powers and duties in relation to an appeal under section 100 (appeal against planning authority decision or failure to make decision) or 127 (appeal against an enforcement notice) as the Welsh Ministers have where they determine such appeals themselves.
649. [Paragraph 3](#) concerns the arrangements that an appointed person may make to conduct an appeal. Subparagraph (1) permits the appointed person to hold a local inquiry or hearing in connection with an appeal where such proceedings are allowed by a determination under section 174. Under subparagraph (2) an appointed person may appoint an assessor to advise on matters arising at a local inquiry or hearing or in written representations associated with an appeal. Since both section 100 and section 127 allow an appeal on the ground that the building is not of special architectural or historic interest, an appointed person might, for example, find it helpful to call on an assessor with particular knowledge of a class of buildings or the history of the area for specialist advice on matters arising in connection with the appeal.
650. [Paragraph 4](#) makes provision for the Welsh Ministers to revoke an appointed person's appointment at any point before an appeal is determined, and appoint another person to undertake the appeal. In these circumstances, the appeal must start afresh, but the Welsh

*These notes refer to the Historic Environment (Wales) Act  
2023 (c.3) which received Royal Assent on 14 June 2023*

Ministers do not need to give a person an opportunity to make fresh representations, or to modify or withdraw representations.

651. [Paragraph 5](#) provides the procedure to be followed should the Welsh Ministers issue a case-specific direction under 173(3)(b) that an appeal is to be determined by them rather than by an appointed person. [Paragraph 6](#) further provides that the Welsh Ministers may revoke such a direction at any point before an appeal is determined and appoint a person to determine the appeal.
652. [Paragraph 7](#) contains supplementary provisions. [Paragraph 7\(1\)](#) establishes that the appellant or planning authority cannot make application to the High Court under sections 183 or 184 that the Welsh Ministers should have determined the appeal unless they challenged the appointed person's power to determine the appeal before any decision was made.
653. [Paragraph 7\(2\)](#) provides that, where the Welsh Ministers appoint a member of staff of the Welsh Government to carry out their functions in relation to an appeal, those functions are to be treated as functions of the Welsh Government for the purposes of the [Public Services Ombudsman \(Wales\) Act 2019 \(anaw 3\)](#). This will enable the Public Services Ombudsman for Wales to investigate any allegations of maladministration made in relation to the appointed person's discharge of those functions.