

HISTORIC ENVIRONMENT (WALES) ACT 2023

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

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.

Section 174 — Choice of inquiry, hearing or written procedure

654. [Section 174](#) requires the Welsh Ministers to determine, in each case, the procedure to follow in considering the proceedings set out in subsection (7). The procedure can be a local inquiry, a hearing, written representations or any combination of those three. The choice of procedure will largely be determined by the extent to which evidence needs to be tested through oral examination. Written representations are suitable when the issues raised can be clearly understood from the submitted documents and a site inspection. A hearing will be scheduled where evidence needs to be tested through questioning but there is no need for cross-examination or for evidence to be given on oath. An inquiry is likely to be necessary where the issues are complex and the evidence needs forensic examination through cross-examination. It is possible that some issues in cases will be considered on the basis of written submissions while others will be examined in a hearing or inquiry.
655. The Welsh Ministers must determine the procedure within a period prescribed in regulations, but may vary that determination with a further determination at any time before the proceedings conclude. The Welsh Ministers must notify the appellant or applicant (as appropriate, depending on the nature of the proceedings) and the planning authority of the procedure that has been selected and publish the criteria that are to be applied in determining the procedure to be followed.

Section 175 — Procedural requirements

656. [Section 175](#) allows the Welsh Ministers to make regulations setting out the procedures to be followed in connection with any appeal, application or reference that is to be considered by the Welsh Ministers under Part 3 and Part 4 of the Act (whether by local inquiry, hearing or written representations). The regulations may also make provision for the procedure to be followed for any other local inquiry or hearing held by or on behalf of Welsh Ministers under Parts 3 or 4 or this Part of the Act. For example, the regulations may, therefore, set procedures for hearings or inquiries that are held before the Welsh Ministers to confirm an order modifying or revoking listed building consent (see Schedule 8). The Welsh Government has published the *Procedural Guide — Wales* (2017), for appeals including listed building and conservation area consent appeals, listed building and conservation area enforcement notice appeals and listed building or conservation area consent call-ins. It is available on the “Planning appeals guidance” page of the Welsh Government website.

Section 176 — Power of Welsh Ministers to hold local inquiry

Section 177 — Power of person holding inquiry to require evidence

657. **Section 176** allows the Welsh Ministers to cause a local inquiry to be held for the purpose of exercising any of their functions in Parts 3 and 4 of the Act, or under this Part. **Section 177** allows the person holding an inquiry to summon any person to attend an inquiry to give evidence or to produce any documents that relate to the inquiry.
658. **Section 177(5) to (7)** establishes offences relating to a failure to comply with a summons to an inquiry.
659. A person guilty of an offence on summary conviction is liable to a fine not exceeding level 3 on the standard scale or a term of imprisonment not exceeding the maximum term for summary offences, or both (subsection (6)).

Section 178 — Access to evidence at inquiry

Section 179 — Payment of appointed representative where access to evidence restricted

660. At a local inquiry held under this Part, section 178 requires all oral evidence to be heard in public and all documentary evidence to be available for public inspection. However, where the Welsh Ministers or the Secretary of State consider that public disclosure would be likely to reveal information about national security or the security of any premises or property and would be against the national interest, subsection (2) provides that the Welsh Ministers or the Secretary of State may direct that oral evidence be heard and documents be inspected by specific people only.
661. If such a direction is being considered, the Counsel General, the Welsh Government's law officer and chief legal advisor, may appoint a person (an "appointed representative") to represent the interests of those people who would be prevented from hearing or inspecting the evidence.
662. **Section 179** provides for the payment of the appointed representative whether or not an inquiry takes place. The Welsh Ministers or the Secretary of State may direct a "responsible person" with a national security or other interest in the inquiry to pay the appointed representative's expenses. If, for instance, a local inquiry were held in connection with an appeal relating to a listed building on an active military base in Wales, there could easily be reasons for limiting access to information in the interest of national security. In such a case, the Welsh Ministers or the Secretary of State might direct the Ministry of Defence, as the responsible person, to pay the costs of the appointed representative.

Section 180 — Payment of costs of Welsh Ministers

663. **Section 180** allows the Welsh Ministers to recover the costs they incur in proceedings on any application, appeal or reference made to the Welsh Ministers under Part 3 or Part 4 whether matters proceed by way of written representations, a hearing or inquiry. They may also recover the costs they incur where a local inquiry or hearing is held for the purpose of making any other kind of decision under Parts 3 and 4 or this Part, for example prior to confirming a purchase notice or making an order modifying or revoking listed building consent.
664. **Section 180** allows the Welsh Ministers to recover the entire administrative costs they incur, including general staff costs and overheads. It also allows the Welsh Ministers to make regulations prescribing a standard daily amount for specified proceedings.

Section 181 — Orders relating to costs of parties

665. **Section 181** allows the Welsh Ministers to order one party to pay another party's costs, which may include costs in respect of an inquiry or hearing that does not take place.
666. Costs will only be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense.
667. Guidance on the award of costs is contained in the Welsh Government's *Development Management Manual Section 12 Annex: Award of Costs* (2016).