

Status: This version of this schedule contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Historic Environment (Wales) Act 2023, SCHEDULE 12. (See end of Document for details)

PROSPECTIVE

SCHEDULE 12

(introduced by section 173(6))

DETERMINATION OF APPEAL BY APPOINTED PERSON OR THE WELSH MINISTERS

Introduction

1 In this Schedule—

“appointed person” (“*person a benodir*”) means a person appointed by the Welsh Ministers under section 173 to determine an appeal under section 100 or 127;

“the planning authority” (“*yr awdurdod cynllunio*”) means the planning authority in whose area the building to which the appeal relates is situated.

Commencement Information

II Sch. 12 para. 1 not in force at Royal Assent, see [s. 212\(2\)](#)

Powers and duties of appointed person

2 (1) An appointed person has the same powers and duties—

- (a) in relation to an appeal under section 100 as the Welsh Ministers have under section 104;
- (b) in relation to an appeal under section 127 as the Welsh Ministers have under section 128.

(2) Sub-paragraph (3) applies where any enactment (other than this Schedule or section 174)—

- (a) refers (or is to be read as referring) to the Welsh Ministers in a context relating to or capable of relating to an appeal to which section 173 applies, or
- (b) refers (or is to be read as referring) to anything done or authorised or required to be done by, to or before the Welsh Ministers in connection with any such appeal.

(3) So far as the context permits, the enactment is to be read, in relation to an appeal determined or to be determined by an appointed person, as if the reference to the Welsh Ministers were or included a reference to an appointed person.

Commencement Information

I2 Sch. 12 para. 2 not in force at Royal Assent, see [s. 212\(2\)](#)

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Local inquiry, hearing or written representations

- 3 (1) An appointed person may hold a local inquiry or a hearing in connection with an appeal where a determination under section 174 provides for the appeal to be considered in that way.
- (2) The Welsh Ministers or an appointed person may appoint an assessor to advise the appointed person on any matters that arise—
- (a) at a local inquiry or hearing held by the appointed person in connection with an appeal or in consequence of such an inquiry or hearing, or
 - (b) in written representations made to the appointed person in connection with an appeal or in consequence of such representations.

Commencement Information

I3 Sch. 12 para. 3 not in force at Royal Assent, see [s. 212\(2\)](#)

Replacement of appointed person

- 4 (1) At any time before an appointed person has determined an appeal, the Welsh Ministers may—
- (a) revoke the person’s appointment, and
 - (b) appoint another person under section 173 to determine the appeal.
- (2) Where a new appointment is made, the consideration of the appeal, and any inquiry or other hearing in connection with the appeal, must start afresh.
- (3) Sub-paragraph (2) does not require any person to be given an opportunity to—
- (a) make fresh representations, or
 - (b) modify or withdraw any representations the person has already made.

Commencement Information

I4 Sch. 12 para. 4 not in force at Royal Assent, see [s. 212\(2\)](#)

Direction under section 173(3)(b) that appeal is to be determined by Welsh Ministers

- 5 (1) This paragraph applies where the Welsh Ministers give a direction under section 173(3)(b) that an appeal which would otherwise be determined by an appointed person is instead to be determined by them.
- (2) The direction must state the reasons for which it is given and must be served on—
- (a) the person, if any, appointed to determine the appeal,
 - (b) the appellant,
 - (c) the planning authority, and
 - (d) in the case of an appeal under section 100, any person who made representations relating to the subject matter of the appeal which regulations under section 91(4) required the planning authority to take into account.
- (3) The Welsh Ministers must give the persons mentioned in sub-paragraph (2)(b) to (d) an opportunity to make further representations if the reasons for the direction raise matters about which any of those persons have not made representations.

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- (4) Except as provided by sub-paragraph (3), the Welsh Ministers need not give any person an opportunity to—
- (a) appear before and be heard by a person appointed by them,
 - (b) make fresh representations, or
 - (c) modify or withdraw any representations the person has already made.
- (5) In determining the appeal the Welsh Ministers may take into account any report made to them by a person previously appointed to determine it.
- (6) Subject to this paragraph, the provisions of this Act that are relevant to the appeal apply to it as if this Schedule had never applied.

Commencement Information

I5 Sch. 12 para. 5 not in force at Royal Assent, see [s. 212\(2\)](#)

Revocation of direction under section 173(3)(b)

- 6 (1) The Welsh Ministers may by a further direction revoke a direction under section 173(3)(b) at any time before the determination of the appeal.
- (2) The further direction must state the reasons for which it is given and must be served on the persons on whom paragraph 5(2) required the direction under section 173(3)(b) to be served.
- (3) Where a further direction is given under this paragraph, section 173 and this Schedule apply as if no direction had been given under paragraph 5 (and accordingly the Welsh Ministers must appoint a person under that section to determine the appeal).
- (4) But anything done by or on behalf of the Welsh Ministers in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) is, unless the appointed person directs otherwise, to be treated as having been done by the appointed person.

Commencement Information

I6 Sch. 12 para. 6 not in force at Royal Assent, see [s. 212\(2\)](#)

Supplementary provisions

- 7 (1) It is not a ground of application to the High Court under section 183, or of appeal to the High Court under section 184, that an appeal ought to have been determined by the Welsh Ministers instead of an appointed person, unless the appellant or the planning authority challenges the appointed person's power to determine the appeal before the decision on the appeal is given.
- (2) Where an appointed person is a member of the staff of the Welsh Government, the person's functions of determining an appeal and doing anything in connection with it are to be treated for the purposes of the [Public Services Ombudsman \(Wales\) Act 2019 \(anaw 3\)](#) as functions of the Welsh Government.

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I7 Sch. 12 para. 7 not in force at Royal Assent, see [s. 212\(2\)](#)

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