



Historic Environment (Wales) Act 2023

2023 asc 3

PART 5

SUPPLEMENTARY PROVISION ABOUT BUILDINGS OF SPECIAL INTEREST AND CONSERVATION AREAS

PROSPECTIVE

CHAPTER 2

PROCEEDINGS BEFORE THE WELSH MINISTERS

Procedural provisions applying to appeals to Welsh Ministers

172 Fees for appeals

- (1) The Welsh Ministers may by regulations require a person who makes an appeal to which this section applies to pay a fee to the Welsh Ministers.
- (2) This section applies to—
 - (a) an appeal under section 100 (appeal against decision or failure to make decision on application for listed building consent or conservation area consent, for the variation or removal of conditions or for approval of details);
 - (b) an appeal under section 127 (appeal against enforcement notice).
- (3) Regulations under this section may in particular—
 - (a) make provision about when a fee must be paid;
 - (b) make provision about how a fee is to be calculated (including who is to make the calculation);
 - (c) specify circumstances in which a fee is to be waived or refunded (wholly or in part);

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- (d) specify circumstances in which no fee is to be paid;
- (e) make provision about the effect of paying or failing to pay a fee in accordance with the regulations (which may include provision that amends, repeals or revokes any enactment, including any provision of this Act).

Commencement Information

I1 S. 172 not in force at Royal Assent, see [s. 212\(2\)](#)

173 Determination of appeal by appointed person

- (1) An appeal to which this section applies is to be determined by a person appointed by the Welsh Ministers (instead of by the Welsh Ministers).
- (2) This section applies to—
 - (a) an appeal under section 100 (appeal against decision or failure to make decision on application for listed building consent or conservation area consent, for the variation or removal of conditions or for approval of details);
 - (b) an appeal under section 127 (appeal against enforcement notice).
- (3) But this section does not apply to an appeal if—
 - (a) it is an appeal of a description specified in regulations made by the Welsh Ministers, or
 - (b) the Welsh Ministers direct that the appeal is to be determined by them instead of by an appointed person.
- (4) This section does not affect any provision of this Act or of regulations made under it that an appeal may be made to, or that a notice of appeal must be served on, the Welsh Ministers.
- (5) Where an appointed person determines an appeal, the appointed person’s decision is to be treated as the decision of the Welsh Ministers.
- (6) Schedule 12 makes further provision in connection with appointments under subsection (1) and directions under subsection (3)(b).

Commencement Information

I2 S. 173 not in force at Royal Assent, see [s. 212\(2\)](#)

Procedural provisions applying to appeals and other proceedings before Welsh Ministers

174 Choice of inquiry, hearing or written procedure

- (1) The Welsh Ministers must in each case determine the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination must provide for the proceedings to be considered in one or more of the following ways—
 - (a) at a local inquiry;
 - (b) at a hearing;

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- (c) on the basis of representations in writing.
- (3) The Welsh Ministers must make a determination before the end of the period specified in regulations made by the Welsh Ministers.
- (4) A determination may be varied by a further determination at any time before the proceedings to which it relates are determined.
- (5) The Welsh Ministers must notify the following persons of a determination—
 - (a) the applicant or appellant (as appropriate), and
 - (b) the planning authority concerned.
- (6) The Welsh Ministers must publish the criteria they will apply in making determinations.
- (7) This section applies to the following proceedings—
 - (a) an application referred to the Welsh Ministers under section 94 (reference of application for listed building consent or conservation area consent or for the variation or removal of conditions);
 - (b) an appeal under section 100 (appeal against decision or failure to make decision on application for consent, for the variation or removal of conditions or for approval of details);
 - (c) an application for listed building consent or conservation area consent made to the Welsh Ministers under section 106 (urgent works on Crown land);
 - (d) an appeal under section 127 (appeal against enforcement notice).
- (8) The Welsh Ministers may by regulations amend subsection (7) to—
 - (a) add proceedings under or by virtue of Part 3, Part 4 or this Part,
 - (b) remove proceedings, or
 - (c) modify a description of proceedings.

Commencement Information

I3 S. 174 not in force at Royal Assent, see [s. 212\(2\)](#)

175 Procedural requirements

- (1) The Welsh Ministers may by regulations make provision about the procedure to be followed in connection with—
 - (a) proceedings on any application, appeal or reference made to the Welsh Ministers under or by virtue of Part 3 or 4 (whether it is considered at a local inquiry, at a hearing or on the basis of representations in writing);
 - (b) any other local inquiry or hearing held or to be held by or on behalf of the Welsh Ministers under or by virtue of any provision of those Parts or this Part.
- (2) The regulations may include provision about—
 - (a) the procedure to be followed in connection with matters preparatory or subsequent to an inquiry or hearing or to the making of representations in writing;
 - (b) the conduct of proceedings.
- (3) The regulations may include provision about the procedure to be followed—

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- (a) where steps have been taken with a view to the holding of an inquiry or hearing which does not take place,
- (b) where steps have been taken with a view to the determination of any matter by a person appointed by the Welsh Ministers and the proceedings are the subject of a direction that the matter must instead be determined by the Welsh Ministers, or
- (c) where steps have been taken in pursuance of such a direction and a further direction is given revoking that direction,

and may provide that such steps are to be treated as compliance, in whole or in part, with the requirements of the regulations.

(4) The regulations may—

- (a) specify a time limit within which a party to proceedings must submit representations in writing and any supporting documents, or enable the Welsh Ministers to give directions setting the time limit in a particular case or in cases of a particular description;
- (b) enable the Welsh Ministers to proceed to a decision taking into account only the representations in writing and supporting documents that were submitted within the time limit;
- (c) enable the Welsh Ministers, after giving the parties notice in writing of their intention to do so, to proceed to a decision even though no representations in writing were submitted within the time limit, if they consider that they have sufficient material before them to enable them to reach a decision on the merits of the case.

(5) The regulations may also make provision about the circumstances in which—

- (a) a direction about the payment of the Welsh Ministers' costs may be given under section 180;
- (b) an order about the payment of a party's costs may be made under section 181.

(6) The regulations may provide that in circumstances specified in the regulations a matter may not be raised in proceedings on an appeal to the Welsh Ministers unless—

- (a) the matter was previously raised before a time specified in the regulations, or
- (b) it is shown that the matter could not have been raised before that time.

Commencement Information

I4 S. 175 not in force at Royal Assent, see [s. 212\(2\)](#)

Local inquiries

176 Power of Welsh Ministers to hold local inquiry

- (1) The Welsh Ministers may cause a local inquiry to be held for the purposes of the exercise of any of their functions under or by virtue of Part 3, Part 4 or this Part.
- (2) See also paragraph 3(1) of Schedule 12 for the power of a person appointed by the Welsh Ministers under section 173 to hold a local inquiry in connection with an appeal.

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Commencement Information

I5 S. 176 not in force at Royal Assent, see [s. 212\(2\)](#)

177 Power of person holding inquiry to require evidence

- (1) A person holding a local inquiry under this Part may by summons require any person—
 - (a) to attend the inquiry, at a time and place stated in the summons, and to give evidence, or
 - (b) to produce any documents in the person’s possession or under the person’s control which relate to any matter in question at the inquiry.
- (2) The person holding the inquiry may take evidence on oath, and for that purpose may administer oaths.
- (3) A summons under this section does not require a person to attend the inquiry unless the person’s necessary expenses of attending are paid or offered to the person.
- (4) A person may not be required under this section to produce the title (or any instrument relating to the title) of any land which does not belong to a local authority.
- (5) It is an offence for a person to—
 - (a) refuse or deliberately fail to comply with a requirement of a summons under this section, or
 - (b) deliberately alter, suppress, conceal or destroy a document the person is required, or is liable to be required, to produce under this section.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding the maximum term for summary offences, or both.
- (7) In subsection (6) “the maximum term for summary offences” means—
 - (a) in relation to an offence committed before section 281(5) of the [Criminal Justice Act 2003 \(c. 44\)](#) comes into force, 6 months;
 - (b) in relation to an offence committed after it comes into force, 51 weeks.

Commencement Information

I6 S. 177 not in force at Royal Assent, see [s. 212\(2\)](#)

178 Access to evidence at inquiry

- (1) At a local inquiry held under this Part—
 - (a) oral evidence must be heard in public, and
 - (b) documentary evidence must be available for public inspection.
- (2) But if a ministerial authority is satisfied that both of the conditions in subsection (3) are met in relation to an inquiry, it may direct that evidence of a description specified in the direction is to be heard or available for inspection at that inquiry only by persons who are specified in the direction or of a description specified in it.
- (3) The conditions are—

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- (a) that giving evidence of a particular description in public or making it available for public inspection would be likely to result in the disclosure of information about—
 - (i) national security, or
 - (ii) the measures taken or to be taken to ensure the security of any land or other property, and
 - (b) that the public disclosure of the information would be against the national interest.
- (4) If a ministerial authority is considering giving a direction under this section, the Counsel General may appoint a person (an “appointed representative”) to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given.
- (5) If there is no appointed representative when a ministerial authority gives a direction under this section, the Counsel General may at any time appoint a person as an appointed representative for the purposes of the inquiry.
- (6) The Welsh Ministers may by regulations make provision about—
- (a) the procedure to be followed by a ministerial authority before it gives a direction under this section in a case where there is an appointed representative;
 - (b) the functions of an appointed representative.
- (7) In this section and section 179, “ministerial authority” means the Welsh Ministers or the Secretary of State.

Commencement Information

I7 S. 178 not in force at Royal Assent, see [s. 212\(2\)](#)

179 Payment of appointed representative where access to evidence restricted

- (1) This section applies if a person is appointed under section 178 as an appointed representative for the purposes of a local inquiry, whether or not the inquiry takes place.
- (2) A ministerial authority may direct a person (“the responsible person”) to pay the fees and expenses of the appointed representative.
- (3) The responsible person must be a person that the ministerial authority considers is, or would have been, interested in the inquiry in relation to—
 - (a) national security, or
 - (b) the measures taken or to be taken to ensure the security of any land or other property.
- (4) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the ministerial authority that gave the direction.
- (5) The ministerial authority must cause the amount agreed between the appointed representative and the responsible person, or determined by the ministerial authority, to be certified.

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(6) The certified amount is recoverable from the responsible person as a debt.

Commencement Information

18 S. 179 not in force at Royal Assent, see [s. 212\(2\)](#)

Costs of proceedings before Welsh Ministers

180 Payment of costs of Welsh Ministers

- (1) This section applies to the following proceedings—
 - (a) proceedings on an application, appeal or reference made to the Welsh Ministers under or by virtue of Part 3 or 4 (whether it is considered at a local inquiry, at a hearing or on the basis of representations in writing);
 - (b) any other local inquiry or hearing held or to be held by or on behalf of the Welsh Ministers under or by virtue of any provision of those Parts or this Part.
- (2) The Welsh Ministers may give a direction requiring the applicant or appellant, or a planning authority or other party to the proceedings, to pay the costs incurred by the Welsh Ministers in relation to the proceedings (or so much of those costs as the Welsh Ministers may direct).
- (3) The costs incurred by the Welsh Ministers in relation to any proceedings include—
 - (a) the entire administrative cost incurred by the Welsh Ministers in connection with the proceedings, including in particular a reasonable amount that they determine in respect of general staff costs and overheads of the Welsh Government;
 - (b) costs in respect of an inquiry or hearing that does not take place.
- (4) The Welsh Ministers may by regulations specify a standard daily amount for proceedings of a specified description.
- (5) Where proceedings of a specified description take place, the costs incurred by the Welsh Ministers are to be taken to be—
 - (a) the standard daily amount for each day (or an appropriate proportion of that amount for a part of a day) on which a specified person is engaged in dealing with the case;
 - (b) costs actually incurred in connection with dealing with the case on—
 - (i) travelling or subsistence allowances, or
 - (ii) the provision of accommodation or other facilities;
 - (c) any costs attributable to the appointment of specified persons to assist in dealing with the case;
 - (d) any legal costs or disbursements incurred or made by or on behalf of the Welsh Ministers in connection with the case.
- (6) In this section “specified” means specified in regulations made by the Welsh Ministers.

Commencement Information

19 S. 180 not in force at Royal Assent, see [s. 212\(2\)](#)

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181 Orders relating to costs of parties

- (1) This section applies to the following proceedings—
 - (a) proceedings on an application, appeal or reference made to the Welsh Ministers under or by virtue of Part 3 or 4 (whether it is considered at a local inquiry, at a hearing or on the basis of representations in writing);
 - (b) any other local inquiry or hearing held or to be held by or on behalf of the Welsh Ministers under or by virtue of any provision of those Parts or this Part.
- (2) The Welsh Ministers may make orders about—
 - (a) the costs of the applicant or appellant, or a planning authority or other party to the proceedings (which may include costs in respect of an inquiry or hearing that does not take place), and
 - (b) the person or persons who must pay the costs.
- (3) But the Welsh Ministers may not order a person to pay the costs of another party unless they are satisfied that—
 - (a) the person has behaved unreasonably in relation to the proceedings, and
 - (b) the person's unreasonable behaviour has caused the other party to incur unnecessary or wasted expenditure.
- (4) The power to make orders under this section must also be exercised in accordance with any provision made under section 175(5)(b) (procedural requirements).

Commencement Information

I10 S. 181 not in force at Royal Assent, see [s. 212\(2\)](#)

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