



# Historic Environment (Wales) Act 2023

2023 asc 3

PROSPECTIVE

## PART 5 **E+W**

### SUPPLEMENTARY PROVISION ABOUT BUILDINGS OF SPECIAL INTEREST AND CONSERVATION AREAS

#### CHAPTER 1 **E+W**

##### EXERCISE OF FUNCTIONS BY PLANNING AUTHORITIES AND OTHER LOCAL AUTHORITIES

#### 167 Fees and charges for exercising functions **E+W**

- (1) The Welsh Ministers may by regulations require the payment of a fee or charge to a planning authority for—
  - (a) performing any of its functions under Part 3, Part 4, this Part or Part 7 as it applies for the purposes of any of those Parts;
  - (b) doing anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of those functions.
- (2) Regulations under this section may in particular—
  - (a) make provision about when a fee or charge must be paid;
  - (b) make provision about who must pay a fee or charge;
  - (c) make provision about how a fee or charge is to be calculated (including who is to make the calculation);
  - (d) specify circumstances in which a fee or charge is to be waived or refunded (wholly or in part);
  - (e) specify circumstances in which no fee or charge is to be paid;

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- (f) make provision about the effect of paying or failing to pay a fee or charge in accordance with the regulations (which may include provision that amends, repeals or revokes any enactment, including any provision of this Act);
  - (g) specify circumstances in which a fee or charge payable to one planning authority is to be transferred to another planning authority.
- (3) If regulations under this section provide for a planning authority to calculate the amount of any fees or charges, the authority must ensure that, taking one financial year with another, its income from the fees or charges does not exceed the cost of performing the functions, or doing the things, to which they relate.

#### Commencement Information

- 11** S. 167 not in force at Royal Assent, see [s. 212\(2\)](#)

### 168 Arrangements for exercising functions in relation to applications **E+W**

- (1) Sections 319ZA to 319ZD of the [Town and Country Planning Act 1990 \(c. 8\)](#) (discharge of functions relating to applications) apply to the exercise by a planning authority of its functions in relation to applications under or by virtue of Parts 3 and 4 as they apply to the exercise of its functions in relation to applications under that Act.
- (2) The validity of a consent or determination granted or made, or purported to be granted or made, by a planning authority in respect of an application made under or by virtue of either of those Parts may not be questioned in any legal proceedings, or in any other proceedings under this Act, on the ground that the consent or determination should have been granted or made by another planning authority.

#### Commencement Information

- 12** S. 168 not in force at Royal Assent, see [s. 212\(2\)](#)

### 169 Arrangements for obtaining specialist advice **E+W**

- (1) The Welsh Ministers may at any time direct a planning authority to submit for their approval the arrangements the authority proposes to make for obtaining specialist advice in connection with its relevant functions.
- (2) The authority must submit its proposed arrangements to the Welsh Ministers within the period specified in the direction.
- (3) If the Welsh Ministers are not satisfied with the arrangements that the authority (“authority A”) proposes to make, they may direct authority A and another planning authority specified in the direction (“authority B”)—
- (a) to make an agreement under section 113 of the [Local Government Act 1972 \(c. 70\)](#) to place the services of persons employed by authority B who are qualified to give the specialist advice at the disposal of authority A, or
  - (b) to make arrangements for authority B to exercise of any of the relevant functions of authority A.
- (4) A direction under subsection (3)(b) may make provision about the terms of the arrangements.

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- (5) Before giving a direction under subsection (3) the Welsh Ministers must consult both planning authorities.
- (6) For the purposes of this section the relevant functions of a planning authority are its functions under or by virtue of—
- (a) sections 83 and 84 (temporary listing of buildings),
  - (b) Chapter 2 (grant, modification and revocation of consent) of Part 3,
  - (c) Chapter 3 (listed building partnership agreements) of that Part,
  - (d) Chapter 4 (enforcement of controls) of that Part,
  - (e) section 314A(1) of the [Town and Country Planning Act 1990 \(c. 8\)](#) (planning permission for development affecting listed buildings), and
  - (f) sections 158 to 163 of this Act (designation of conservation areas, duties of planning authorities and control of demolition).

#### Commencement Information

**I3** S. 169 not in force at Royal Assent, see [s. 212\(2\)](#)

### 170 Form of documents **E+W**

The Welsh Ministers may by regulations specify the form and content of any notice, order or other document that a local authority is authorised or required to serve, make or issue under or by virtue of Part 3, Part 4, this Part or Part 7 as it applies for the purposes of any of those Parts.

#### Commencement Information

**I4** S. 170 not in force at Royal Assent, see [s. 212\(2\)](#)

### 171 Contributions towards expenditure by local authorities **E+W**

- (1) 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 its functions under Part 3 (including its functions under that Part as applied by section 163).
- (2) Subsection (1) does not apply to expenditure incurred—
- (a) in the payment of compensation under sections 80, 86, 108, 116 and 122 (but this does not prevent an authority complying with a direction under subsection (3)(b)), or
  - (b) in or in connection with the exercise of functions under sections 143 to 146, 148 and 149.
- (3) Where compensation is 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 Chapter 2 or 4 of that Part as applied by section 163), the Welsh Ministers may—
- (a) contribute towards the payment of the compensation, if the thing was done wholly or partly in the interest of a service which is provided by the Welsh Ministers, or

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- (b) direct another local authority to contribute an amount that the Welsh Ministers consider reasonable, having regard to any benefit accruing to that other authority as a result of the thing being done.
- (4) Subsection (3)(b) does not apply where a planning authority is liable to pay compensation under section 116 in consequence of the termination of a listed building partnership agreement or a provision of such an agreement.
- (5) In such a case, the Welsh Ministers may direct any other planning authority that is or was a party to the agreement to reimburse the authority by which the compensation is payable, in whole or in part.
- (6) The Welsh Ministers may not give a direction under subsection (5) unless they have consulted all of the planning authorities that are or were parties to the agreement.

**Commencement Information**

**I5** S. 171 not in force at Royal Assent, see [s. 212\(2\)](#)

**CHAPTER 2** **E+W**

PROCEEDINGS BEFORE THE WELSH MINISTERS

*Procedural provisions applying to appeals to Welsh Ministers*

**172 Fees for appeals** **E+W**

- (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);
  - (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**

**I6** S. 172 not in force at Royal Assent, see [s. 212\(2\)](#)

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### 173 Determination of appeal by appointed person **E+W**

- (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

- I7** 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 **E+W**

- (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;
  - (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.

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- (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

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

### 175 Procedural requirements **E+W**

- (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—
- (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.



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- (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

**I9** S. 175 not in force at Royal Assent, see [s. 212\(2\)](#)

### Local inquiries

#### 176 Power of Welsh Ministers to hold local inquiry **E+W**

- (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.

#### Commencement Information

**I10** S. 176 not in force at Royal Assent, see [s. 212\(2\)](#)

#### 177 Power of person holding inquiry to require evidence **E+W**

- (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.

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- (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**

**I11** S. 177 not in force at Royal Assent, see [s. 212\(2\)](#)

### **178 Access to evidence at inquiry** E+W

- (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—
  - (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



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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

**I12** S. 178 not in force at Royal Assent, see [s. 212\(2\)](#)

### 179 **Payment of appointed representative where access to evidence restricted** E

+W

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

#### Commencement Information

**I13** S. 179 not in force at Royal Assent, see [s. 212\(2\)](#)

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### *Costs of proceedings before Welsh Ministers*

#### **180 Payment of costs of Welsh Ministers** E+W

- (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**

**I14** S. 180 not in force at Royal Assent, see [s. 212\(2\)](#)

#### **181 Orders relating to costs of parties** E+W

- (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);

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- (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

**I15** S. 181 not in force at Royal Assent, see [s. 212\(2\)](#)

## CHAPTER 3 **E+W**

### VALIDITY AND CORRECTION OF DECISIONS

#### *Validity of decisions and orders*

#### **182** Validity of certain decisions and orders relating to buildings **E+W**

- (1) The validity of a decision or order to which this section applies may not be questioned in any legal proceedings except an application for statutory review under section 183.
- (2) The decisions to which this section applies are—
- (a) a decision on a review under section 81 (review of listing decision);
  - (b) a decision on 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);
  - (c) a decision on 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);
  - (d) a decision on an application for listed building consent or conservation area consent made to the Welsh Ministers under section 106 (urgent works on Crown land);
  - (e) a decision under paragraph 2 of Schedule 9 to confirm or not to confirm a purchase notice, including—
    - (i) a decision to confirm the notice in relation to only part of the land to which it relates, and

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- (ii) a decision to grant listed building consent or conservation area consent, or direct that consent must be granted, instead of confirming the notice in relation to the land or any part of it;
  - (f) a decision under section 128(3)(a) or (b) (determination of appeal against enforcement notice) to grant listed building consent or conservation area consent or remove a condition of consent.
- (3) The orders to which this section applies are—
- (a) an order under section 107 (modification or revocation of consent) made by a planning authority (whether or not it has been confirmed by the Welsh Ministers) or the Welsh Ministers;
  - (b) an order under section 115 (termination of listed building partnership agreement or provision of agreement) made by a planning authority or the Welsh Ministers;
  - (c) an order under section 181 (orders relating to costs of parties) made in connection with a decision mentioned in subsection (2) or an order mentioned in paragraph (a) or (b).
- (4) This section does not prevent any court exercising any jurisdiction in relation to a refusal or failure to make a decision to which this section applies.

#### **Commencement Information**

**I16** S. 182 not in force at Royal Assent, see [s. 212\(2\)](#)

### **183 Application to High Court for statutory review of decision or order** E+W

- (1) A person aggrieved by a decision or order to which section 182 applies, or the authority directly concerned with such a decision or order, may make an application for statutory review.
- (2) An application for statutory review is an application to the High Court questioning the validity of the decision or order on the grounds that—
  - (a) it is not within the powers conferred by this Act, or
  - (b) a requirement of this Act, or of subordinate legislation made under it, has not been complied with in relation to the decision or order.
- (3) An application for statutory review may only be made with the permission of the High Court.
- (4) An application for permission must be made before the end of 6 weeks beginning with the day after—
  - (a) in the case of an application relating to a decision mentioned in section 182(2), the day the decision is made;
  - (b) in the case of an application relating to an order made by a planning authority under section 107 and confirmed by the Welsh Ministers (with or without modifications), the day the order is confirmed;
  - (c) in the case of any other application relating to an order under section 107, the day the order takes effect;
  - (d) in the case of an application relating to an order made by a planning authority under section 115, the day the order is confirmed;

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- (e) in the case of an application relating to any other order mentioned in section 182(3), the day the order is made.
- (5) When considering whether to give permission, the High Court may make an interim order suspending the operation of the decision or order to which the proposed application for statutory review relates until the final determination of the proceedings on—
- (a) the application for permission, or
  - (b) where permission is given, the application for statutory review.
- (6) On an application for statutory review the High Court—
- (a) may make an interim order suspending the operation of the decision or order to which the application relates until the proceedings are finally determined;
  - (b) may quash that decision or order if satisfied that—
    - (i) it is not within the powers conferred by this Act, or
    - (ii) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement of this Act, or of subordinate legislation made under it, in relation to the decision or order.
- (7) For the purposes of this section the authority directly concerned with a decision or order is—
- (a) in the case of a decision on an application referred to the Welsh Ministers under section 94, the planning authority that made the reference;
  - (b) in the case of a decision on an appeal under section 100, the planning authority to which the application to which the appeal relates was made;
  - (c) in the case of a decision to confirm or not to confirm a purchase notice—
    - (i) the planning authority on which the purchase notice was served (see section 109), and
    - (ii) if the Welsh Ministers have modified the notice wholly or in part by substituting another local authority or statutory undertaker for the planning authority, that other local authority or statutory undertaker;
  - (d) in the case of a decision under section 128(3)(a) or (b) on an appeal against an enforcement notice issued by a planning authority, the authority that issued the notice;
  - (e) in the case of an order under section 107, the planning authority in whose area the building to which the order relates is situated;
  - (f) in the case of an order under section 115, any planning authority that is or was a party to the listed building partnership agreement to which the order relates;
  - (g) in the case of an order made under section 181 in connection with a decision or order mentioned in paragraphs (a) to (f), the authority directly concerned with that decision or order.

#### Commencement Information

I17 S. 183 not in force at Royal Assent, see [s. 212\(2\)](#)

## 184 Appeal to High Court against decision relating to enforcement notice E+W

- (1) Rules of court must provide either—

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *Historic Environment (Wales) Act 2023, PART 5 is up to date with all changes known to be in force on or before 08 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) that an interested person may appeal to the High Court on a point of law against a relevant decision made by the Welsh Ministers, or
  - (b) that where the Welsh Ministers make a relevant decision an interested person may require them to state and sign a case for the opinion of the High Court.
- (2) For the purposes of this section—
- (a) a relevant decision is any decision (including a direction or order) made in proceedings on an appeal under section 127 against an enforcement notice, other than a decision under section 128(3)(a) or (b) to grant consent or remove a condition of consent;
  - (b) the following are interested persons—
    - (i) the person who made the appeal,
    - (ii) the planning authority in whose area the building to which the enforcement notice relates is situated, and
    - (iii) any other person who has an interest in the building.
- (3) At any stage of the proceedings on an appeal under section 127, the Welsh Ministers may state a question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.
- (4) A decision of the High Court on a case stated under subsection (3) is to be treated as a judgment of the court for the purposes of section 16 of the [Senior Courts Act 1981 \(c. 54\)](#) (jurisdiction of Court of Appeal to hear and determine appeals from judgments or orders of High Court).
- (5) Where proceedings are brought by virtue of this section, the High Court or the Court of Appeal (as the case may be) may order that the enforcement notice is to have effect, either in full or to the extent specified in the order, pending the final determination of the proceedings and any re-hearing and determination of the appeal by the Welsh Ministers.
- (6) An order under subsection (5) may be made on whatever terms the court considers appropriate, which may include terms requiring the planning authority to give an undertaking as to damages or any other matter.
- (7) Rules of court may make provision—
- (a) for the Welsh Ministers to be a party to proceedings in the High Court or the Court of Appeal brought by virtue of this section, either generally or in circumstances specified in the rules;
  - (b) about the powers of the High Court or the Court of Appeal to remit the matter to the Welsh Ministers for re-hearing and determination in accordance with the opinion or direction of the court.
- (8) Proceedings in the High Court under this section may only be brought with the permission of the High Court.
- (9) An appeal to the Court of Appeal by virtue of this section may only be brought with the permission of the High Court or the Court of Appeal.

#### Commencement Information

**I18** S. 184 not in force at Royal Assent, see [s. 212\(2\)](#)



*Status:* This version of this part contains provisions that are prospective.

**Changes to legislation:** Historic Environment (Wales) Act 2023, PART 5 is up to date with all changes known to be in force on or before 08 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### Correction of decisions of Welsh Ministers

#### 185 Meaning of “decision document” and “correctable error” **E+W**

- (1) This section applies for the purposes of sections 186 and 187.
- (2) “Decision document” means a document which records—
  - (a) a decision to which section 182 applies (see subsection (2) of that section),
  - (b) a decision on an appeal under section 127 (appeal against enforcement notice), or
  - (c) any other decision made under or by virtue of Part 3, Part 4 or this Part that is of a description specified in regulations made by the Welsh Ministers.
- (3) “Correctable error” means an error which—
  - (a) is contained in any part of the decision document which records the decision, but
  - (b) is not part of any reasons given for the decision,
 and “error” includes omission.

#### Commencement Information

**I19** S. 185 not in force at Royal Assent, see [s. 212\(2\)](#)

#### 186 Power to correct correctable errors in decision documents **E+W**

- (1) This section applies where a decision document is issued which contains a correctable error.
- (2) If, before the end of the review period, the Welsh Ministers—
  - (a) receive a request in writing to correct the error from any person, or
  - (b) send a statement in writing to the applicant which explains the error and states that they are considering correcting it,
 the Welsh Ministers must decide whether or not to correct the error.
- (3) But the Welsh Ministers may not make a correction unless they have informed the planning authority that they have received the request mentioned in subsection (2)(a) or sent the statement mentioned in subsection (2)(b).
- (4) The review period is—
  - (a) where the decision document records a decision to which section 182 applies, the period within which an application for permission to apply for statutory review under section 183 may be made to the High Court;
  - (b) where the decision document records a decision on an appeal under section 127 to which section 182 does not apply, the period within which an application for permission to bring proceedings under section 184 may be made to the High Court, not including any time by which the High Court may extend that period,
 and it does not matter whether any such application is actually made.
- (5) As soon as practicable after the Welsh Ministers correct the error or decide not to correct it, they must issue a correction notice.

*Status: This version of this part contains provisions that are prospective.*

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- (6) A correction notice is a notice which—
- (a) specifies the correction of the error, or
  - (b) gives notice of a decision not to correct it.
- (7) The Welsh Ministers must serve the correction notice on—
- (a) the applicant;
  - (b) if the applicant is not the owner of the building or other land to which the original decision relates, every owner of the building or land;
  - (c) the planning authority;
  - (d) if the correction was requested by any other person, that person;
  - (e) any other person who is specified, or is of a description specified, in regulations made by the Welsh Ministers.
- (8) Where the decision document was issued by a person appointed under section 173, the functions of the Welsh Ministers under this section may also be exercised by that person or by any other person appointed under that section to determine appeals instead of the Welsh Ministers.
- (9) In this section—
- “the applicant” (“*y ceisydd*”) means the person who made the application or appeal, or served the purchase notice, to which the original decision relates;
- “owner” (“*perchennog*”), in relation to a building or other land, means—
- (a) an owner of the freehold estate in the building or land, or
  - (b) a tenant under a lease of the building or land granted or extended for a fixed term that has at least 7 years left to run;
- “the planning authority” (“*yr awdurdod cynllunio*”) means the planning authority in whose area the building or other land to which the original decision relates is situated.

#### Commencement Information

**I20** S. 186 not in force at Royal Assent, see [s. 212\(2\)](#)

### 187 Effect and validity of correction notice **E+W**

- (1) If a correction is made under section 186—
- (a) the original decision is to be treated as not having been made;
  - (b) the decision is to be treated for all purposes as having been made on the day the correction notice is issued.
- (2) If a correction is not made—
- (a) the original decision continues to have effect;
  - (b) section 186 and this section do not affect anything done in pursuance of or in relation to the decision.
- (3) Where a correction notice is issued in relation to a decision to which section 182 applies, section 183 applies to the correction notice as if it were a decision to which section 182 applies.

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** Historic Environment (Wales) Act 2023, PART 5 is up to date with all changes known to be in force on or before 08 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) Where a correction notice is issued in relation to a decision to which section 184 applies, section 184 applies to the correction notice as if it were a decision to which that section applies.
- (5) Where regulations under section 185(2)(c) specify a description of decision, the Welsh Ministers must by regulations make provision which corresponds to section 183 or 184 for questioning the validity of a correction notice issued in relation to a decision of that description.
- (6) The validity of a correction notice may not be questioned in any legal proceedings except to the extent provided by virtue of this section.

#### Commencement Information

**I21** S. 187 not in force at Royal Assent, see [s. 212\(2\)](#)

## CHAPTER 4 **E+W**

### GENERAL

#### *The Crown*

#### **188 Representation of Crown and Duchy interests in land **E+W****

- (1) This section applies to anything that is required or authorised to be done for the purposes of Part 3, Part 4 or this Part by or in relation to an owner of an interest in land (including an interest only as an occupier of the land).
- (2) To the extent that the interest is a Crown interest or a Duchy interest, the thing must be done by or in relation to the appropriate Crown authority.

#### Commencement Information

**I22** S. 188 not in force at Royal Assent, see [s. 212\(2\)](#)

#### **189 Service of documents on the Crown **E+W****

- (1) This section applies where a notice or other document is required or authorised under or by virtue of Part 3, Part 4 or this Part to be served on the Crown.
- (2) The document must be served on the appropriate Crown authority.
- (3) Sections 205 and 206 (general provisions about methods of service) do not apply to the service of the document.

#### Commencement Information

**I23** S. 189 not in force at Royal Assent, see [s. 212\(2\)](#)

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *Historic Environment (Wales) Act 2023, PART 5 is up to date with all changes known to be in force on or before 08 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## 190 Enforcement steps in relation to Crown land E+W

- (1) A planning authority must not take a relevant enforcement step in relation to Crown land without the agreement of the appropriate Crown authority.
- (2) The appropriate Crown authority may give agreement subject to conditions.
- (3) In this section “relevant enforcement step” means anything done in connection with the enforcement of a requirement or prohibition imposed by or under Part 3, Part 4 or this Part.
- (4) It includes—
  - (a) entering land, and
  - (b) bringing proceedings or making an application.
- (5) But it does not include—
  - (a) issuing or serving a notice (for example an enforcement notice or temporary stop notice), or
  - (b) making an order (for example an order under section 107 or 115).

### Commencement Information

**I24** S. 190 not in force at Royal Assent, see [s. 212\(2\)](#)

### *Interpretation*

## 191 Meaning of “local authority” in this Part E+W

In this Part “local authority” has the meaning given by section 157.

### Commencement Information

**I25** S. 191 not in force at Royal Assent, see [s. 212\(2\)](#)

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

Historic Environment (Wales) Act 2023, PART 5 is up to date with all changes known to be in force on or before 08 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 11(3) inserted by [2024 asc 3 Sch. 3 para. 15\(2\)](#)
- s. 58(4)(c) inserted by [2024 asc 3 Sch. 3 para. 15\(3\)](#)
- s. 88(4) inserted by [2024 asc 3 Sch. 3 para. 15\(4\)](#)
- s. 118(2)(f) inserted by [2024 asc 3 Sch. 3 para. 15\(5\)](#)
- s. 161(6) inserted by [2024 asc 3 Sch. 3 para. 15\(6\)](#)