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WELSH STATUTORY INSTRUMENTS

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**2007 No. 2610**

The Environmental Impact Assessment and  
Natural Habitats (Extraction of Minerals by  
Marine Dredging) (Wales) Regulations 2007

**PART 5**

TRANSFER AND VARIATION OF PERMISSIONS

**Transfer of permission**

16.—(1) A permission granted under these Regulations must not be transferred either in whole or in part to another person without the prior approval of the Welsh Ministers and where any transfer is purported to be made without such approval the transfer will be void.

(2) The Welsh Ministers may, upon application from the owner or the holder, approve the transfer either unconditionally or subject to such conditions of transfer as the Welsh Ministers consider appropriate.

(3) Where a permission is transferred, the owner—

- (a) remains liable for any breach of any condition to which the permission is subject, whenever the breach may arise;
- (b) continues to have such rights and obligations in relation to the permission as these Regulations provide.

(4) Any holder of a permission is only liable for breaches of any conditions, including any conditions of transfer, to which the permission is subject which arise whilst the holder is the holder of the permission.

(5) A holder of a permission is not liable for breaches of any conditions imposed to implement regional limits on the tonnages which may be dredged.

(6) Where a permission has been transferred with the Welsh Ministers' approval under paragraph (2), the transfer will cease to have effect at the end of the period of 40 days beginning with the date of the transfer, or such further period as may be agreed by the Welsh Ministers, unless the transferee notifies the Welsh Ministers within that period—

- (a) that the whole or, as the case may be, part of the permission has been transferred to the transferee;
- (b) where the transfer is of part only, of the extent of the part transferred; and
- (c) of the date of the transfer.

**Variation of permission**

17.—(1) The Welsh Ministers may decide to vary a permission granted under these Regulations, in whole or in part.

(2) The Welsh Ministers may do so either —

- (a) on the application of a person mentioned in regulation 18(1); or
  - (b) of the Welsh Ministers' own motion, in the circumstances provided for in regulation 21(1).
- (3) Any variation may be made not only to the permission itself but also to any condition to which the permission was subject prior to the variation.

**Variation of permission on application: preliminary determinations and fees**

18.—(1) An application for variation may be made to the Welsh Ministers —

- (a) where there has been a transfer of the whole of the permission under regulation 16, by the holder;
- (b) where there has been a transfer of part of the permission under regulation 16, and where the proposed variation is in respect of that part, by the holder;
- (c) where—
  - (i) a person (“a prospective transferee”) is considering entering into an agreement with the owner or holder for a transfer of a permission under regulation 16, either in whole or in part, and
  - (ii) the proposed variation relates to a part or the whole of the permission which is intended to be transferred,
 by the prospective transferee; and
- (d) in any other case, by the owner.

(2) An application under paragraph (1) (“a variation application”) must, where the applicant is the holder or a prospective transferee (whether of the whole or part of the permission), be accompanied by a document signifying the owner’s consent in writing to the making of the application.

(3) Before deciding whether or not to grant a variation application, the Welsh Ministers must—

- (a) unless the dredging was determined to be a national defence project when permission was given for the dredging, determine, having regard to such of the selection criteria as are relevant to the proposed variation, whether or not the variation would constitute a relevant project; and
- (b) whether or not the variation would constitute a habitats project.

(4) Where, in order to make a determination under paragraph (3), the Welsh Ministers consider it necessary, the Welsh Ministers may ask the person making the variation application to supply such further information within such specified period and in such form as may reasonably be required.

(5) If the applicant fails to supply the information requested under paragraph (4) within the specified period or such further period as the Welsh Ministers may allow, the application will be deemed to be withdrawn.

(6) Before making a determination under paragraph (3), the Welsh Ministers must consult—

- (a) the owner (if the owner is not the applicant);
- (b) the applicant; and
- (c) the appropriate consultation bodies.

(7) As soon as is reasonably practicable after making a determination under paragraph (3), the Welsh Ministers must—

- (a) send a copy of it to the applicant, together with information about how the decision may be challenged;
- (b) send a copy of it to any other persons consulted under paragraph (6); and

(c) take such steps as the Welsh Ministers consider appropriate to ensure that it is made available to the public concerned.

(8) At the same time as sending to the applicant the copy of the determination under paragraph (7) the Welsh Ministers must request payment of the appropriate fee determined under regulation 25.

(9) If the fee is not paid within such period as the Welsh Ministers specify, or such further period as the Welsh Ministers may allow, the variation application will be deemed to be withdrawn.

#### **Variation of permission on application: relevant projects and habitats projects**

**19.**—(1) Where the Welsh Ministers determine under regulation 18(3)(a) that a variation would constitute a relevant project —

- (a) the Welsh Ministers must request the applicant to supply an environmental statement within a specified period and must not decide the variation application until the applicant has supplied one; and
- (b) the following provisions of these Regulations apply in relation to the variation application as they apply in relation to an application under regulation 10, as if references to deciding an application under paragraph (1) of that regulation and cognate expressions were references to deciding an application under regulation 18—
  - (i) regulations 7 and 8,
  - (ii) paragraphs (4), (5) and (6) of regulation 10,
  - (iii) regulations 11 and 12,
  - (iv) with the exception of paragraph 7(b), regulation 13,
  - (v) regulations 14 and 15,
  - (vi) regulation 23,
  - (vii) regulations 25 to 27, and
  - (viii) regulations 29 and 30.

(2) Where an environmental statement has been requested under paragraph (1)(a) and has not been supplied within the specified period, or such further period as the Welsh Ministers may allow, the application will be deemed to have been withdrawn at the end of such period and the fee will be refunded, provided that no advertisement under regulation 12(1), as applied by paragraph 1(b), has been published at the date of withdrawal.

(3) Where the Welsh Ministers determine under regulation 18(3)(b) that a variation would constitute a habitats project, the following provisions of these Regulations apply in relation to the variation application as they apply in relation to an application made under regulation 10, as if references to deciding an application under paragraph (1) of that regulation and cognate expressions were references to deciding an application under regulation 18—

- (a) regulations 13 and 14;
- (b) regulations 23 to 30.

#### **Variation of permission on application: other cases**

**20.**—(1) Where the Welsh Ministers determine under regulation 18(3) that a variation would not constitute a relevant project or a habitats project, this regulation applies—

- (a) to the application in respect of that variation; and
- (b) to any subsequent application in respect of the same variation which is submitted to the Welsh Ministers within 12 months of the date of the determination.

(2) Where reasonably necessary, the Welsh Ministers may request the applicant to supply further information within such period and in such form as may reasonably be specified.

(3) Where the applicant fails, within such period as the Welsh Ministers have specified, or such further period as the Welsh Ministers may allow, to comply with any request of the Welsh Ministers under paragraph (2), the variation application will be deemed to be withdrawn and the fee will be refunded, provided that, at the date of withdrawal, the Welsh Ministers have not complied with the requirements of paragraph (4).

(4) The Welsh Ministers must send —

- (a) a copy of the variation application and of any further information provided under paragraph (2); and
- (b) a statement that representations may be made to the Welsh Ministers regarding the application, and of the address in Wales to which representations may be sent, and of the period within which representations may be made, which will be not less than eight weeks beginning with the date on which the statement is sent,

to the persons referred to in paragraph (5).

(5) The persons mentioned in paragraph (4) are—

- (a) the appropriate consultation bodies;
- (b) the owner (if the owner is not the applicant); and
- (c) any other person (including any non-governmental organisation promoting environmental protection in Welsh waters) who is likely to have an interest in the application or who the Welsh Ministers consider is likely to be affected by the application.

(6) Before deciding whether to grant or refuse a variation application to which this regulation applies, the Welsh Ministers may give the opportunity of making representations (whether in person or in writing) to a person appointed by the Welsh Ministers for that purpose, the applicant, the owner (if the owner is not the applicant) and any other person whom the Welsh Ministers consider should be given such an opportunity.

(7) In deciding whether to grant or refuse a variation application to which this regulation applies, the Welsh Ministers must take into consideration —

- (a) the information provided in the variation application;
- (b) any further information supplied under paragraph (2) and any other information submitted by the applicant;
- (c) any relevant representations made in response to the copies of the application supplied under paragraph (4);
- (d) the report of any person appointed under paragraph (6); and
- (e) any published policy of the Welsh Ministers in relation to the extraction of minerals by marine dredging.

(8) The Welsh Ministers may decide the variation application by either granting or refusing permission for the variation.

(9) A grant of permission for the variation may be subject to such conditions as the Welsh Ministers consider appropriate, including —

- (a) conditions intended to implement any policy taken into account under paragraph (7)(e) which contains regional limits on the tonnage of minerals which may be dredged, and
- (b) conditions as to the fees, determined in accordance with regulation 25, to be paid in respect of the Welsh Ministers' expenses incurred in interpreting and assessing the results of any monitoring of compliance with the conditions attached to the permission carried out in accordance with such conditions.

(10) The Welsh Ministers must send notice of the decision under paragraph (8) to the persons referred to in paragraph (5), and the notice must state —

- (a) the main reasons for the decision;
- (b) the main considerations on which the decision is based including, if relevant, information about the public participation process;
- (c) where permission is granted —
  - (i) any conditions imposed under paragraph (9), and
  - (ii) where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects; and
- (d) that the decision may be challenged and the procedures for doing so.

### **Revocation, suspension or variation of permission otherwise than on application**

**21.**—(1) This regulation applies where—

- (a) a significant breach has occurred of any condition attached to the permission or to a transfer of the permission; or
  - (b) in any other case the Welsh Ministers consider it appropriate to exercise the powers conferred by this regulation, in order to protect the environment from significant adverse effects caused by the dredging authorised by the permission.
- (2) Where this regulation applies, the Welsh Ministers may—
- (a) revoke the permission; or
  - (b) permanently vary it in whole or in part.
- (3) Before revoking or permanently varying a permission under paragraph (2)—
- (a) the Welsh Ministers must serve notice of the proposed revocation or variation—
    - (i) on the persons listed in paragraph (4), and
    - (ii) in accordance with the provisions of paragraph (5);and
  - (b) the Welsh Ministers may request the owner or the holder of the permission, or of the part of the permission affected, as the case may be, to provide by a specified date, such additional information as may be required, in order that the Welsh Ministers may establish the extent to which the proposed revocation or variation is likely to be effective to protect the environment from any significant adverse effects which would otherwise be caused by the dredging authorised by the permission (“the additional information”).
- (4) The persons mentioned in paragraph (3)(a)(i) are—
- (a) the owner and any holder of the permission or the part affected, as the case may be;
  - (b) the appropriate consultation bodies; and
  - (c) any other person (including any non-governmental organisation promoting environmental protection in Welsh waters) who is likely to have an interest in the application or whom the Welsh Ministers consider is likely to be affected by the revocation or variation.
- (5) The notice served under paragraph (3)(a) must —
- (a) inform the recipients of the date when the proposed revocation or variation is intended to take effect under regulation 22;
  - (b) specify a period, being not less than 28 days from the date of the notice (“the specified period”), within which representations may be made about the proposed revocation or variation; and

- (c) inform the recipients of the consequences of failing to comply with a request for additional information made under paragraph (3)(b), as provided for in paragraph (8).
- (6) The Welsh Ministers must publish a copy of the notice served under paragraph (3)(a) by public advertisement.
- (7) Where the Welsh Ministers consider that it is necessary for the dredging to cease or the permission to be varied as soon as possible —
- (a) the permission will be suspended or the proposed variation, as the case may be, will take effect (for the time being and pending the Welsh Ministers' decision under paragraph (11)) from the date on which notice in accordance with paragraph (3)(a) is served on—
    - (i) the holder of the permission, if any, or,
    - (ii) if there is none, the owner; and
  - (b) the notice served under paragraph 3(a) must inform the recipients of the decision under this paragraph and must state —
    - (i) the main reasons for the decision;
    - (ii) the main considerations on which the decision is based; and
    - (iii) that the decision may be challenged and the procedures for doing so.
- (8) Where the Welsh Ministers request additional information under paragraph (3)(b), but the additional information is not provided by the date specified or within such further period as the Welsh Ministers may allow, and the permission has not been suspended under paragraph (7), the permission will be suspended.
- (9) Where a permission has been suspended under paragraph (8) —
- (a) if the additional information is provided to the Welsh Ministers' satisfaction within six months of the suspension, the suspension will cease and the permission will continue in effect;
  - (b) if the additional information is not so provided, the permission must be revoked by the Welsh Ministers and the Welsh Ministers must send notice of the revocation to the persons listed in paragraph (4).
- (10) If, within the specified period, a person on whom notice has been served under paragraph (3) (a), or a person who has made representations in response to the advertisement published under paragraph (6), so requests, the Welsh Ministers may give—
- (a) to that person; and
  - (b) to any other person on whom notice was served under paragraph (3)(a), or who has made representations in response to the advertisement published under paragraph (6),
- an opportunity to make representations (whether in person or in writing) to a person appointed by the Welsh Ministers for that purpose.
- (11) The Welsh Ministers must decide whether to revoke the permission or vary it permanently having regard, in particular, to—
- (a) any representations made in response to a notice served under paragraph (3)(a) or an advertisement published under paragraph (6); and
  - (b) if applicable, the report of any person appointed under paragraph (10).
- (12) The Welsh Ministers must serve notice of the decision under paragraph (11) on any person on whom notice was served under paragraph (3)(a) and on any person who made representations in response to the advertisement published under paragraph (6); and the notice must state—
- (a) the main reasons for the decision;

- (b) the main considerations on which the decision is based, including, if relevant, information about the public participation process; and
- (c) that the decision may be challenged and the procedures for doing so.

### **Consequences of revocation, suspension or variation**

**22.**—(1) A revocation or variation under regulation 21(2) will take effect, subject to paragraph (2), on the date on which notice is served under regulation 21(12).

(2) Where more than one notice is served under regulation 21(12) in respect of the same revocation or variation and those notices are served on different days, the revocation or variation will take effect on the date on which the last of them is served.

(3) Where a permission has been suspended or a variation has taken effect temporarily, in the circumstances described in regulation 21(7), but the Welsh Ministers' final decision under regulation 21(11) is not to revoke the permission or vary it permanently, the permission will again have effect, or have effect on the terms effective prior to the temporary variation, as the case may be, from the date of the notice served under regulation 21(12).

(4) In relation to a permission which has been suspended under regulation 21(7) or 21(8), which continues in effect under regulation 21(9)(a) or which the Welsh Ministers have decided under regulation 21(11) not to revoke —

- (a) any period specified in the permission for the taking of any action which expires after the date on which the permission was suspended, will be treated as extended by a period equal to that during which the permission was suspended; and
- (b) where a permission requires anything to be done by a specified date which falls after the date upon which the permission was suspended, that specified date will be postponed by a period equal to that during which the permission was suspended.

(5) In relation to a permission which was varied temporarily under regulation 21(8) but which the Welsh Ministers have decided under regulation 21(11) not to vary permanently—

- (a) any period specified in the permission for the taking of any action which expires after the date on which the permission was varied temporarily under paragraph (b) will, if the action relates to matters which are affected by the temporary variation, be treated as extended by a period equal to that during which the permission had effect as varied; and
- (b) where a permission requires any action to be taken by a specified date which falls after the date on which the permission was varied temporarily, the specified date will, if the action relates to matters which are affected by the temporary variation, be postponed by a period equal to that during which the permission had effect as varied.

(6) The revocation or variation of a permission under regulation 21(2), the suspension of a permission under regulation 21(7) or (8), or the temporary variation of a permission under regulation 21(7), will not affect anything done under the permission before the date on which the permission was revoked, varied, suspended or temporarily varied, as the case may be.

### **Offences relating to transfers and variations**

**23.**—(1) A person commits an offence who, for the purposes of obtaining (whether for that person or another) a transfer of a permission under regulation 16 or a variation of a permission under regulation 17, or in response to a request under regulation 21(3)(b) —

- (a) makes a statement or representation, or furnishes a document or information, which that person knows to be false in a material particular; or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

- (2) It is an offence for a person to fail to comply with any condition of transfer.
- (3) While a permission is suspended under regulation 21(7) or regulation 21(8), any continued or further dredging under the permission will be an offence.