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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 4**

**PERMISSIONS FOR DREDGING**

**Applications for permission**

**10.**—(1) An application for permission to carry out dredging must —

- (a) be made to the Welsh Ministers;
- (b) contain such information as the Welsh Ministers may reasonably require;
- (c) unless the dredging falls within one of the cases described in paragraphs (2) and (3), include an environmental statement;
- (d) where paragraph (2) applies, and the Secretary of State's determination relates to part only of the dredging, include an environmental statement in respect of any part of the dredging to which the determination does not apply; and
- (e) be accompanied by a fee determined in accordance with regulation 25.

(2) The first case is where the Secretary of State has determined under regulation 5(2) that the dredging constitutes or forms part of a project serving national defence purposes and that, in the opinion of the Secretary of State, the application of these Regulations would have an adverse effect on those purposes.

(3) The second case is where the Welsh Ministers have, within 12 months prior to the date of the application, determined in response to an application under regulation 6(1)(a) that the dredging does not constitute a relevant project.

(4) The Welsh Ministers may require the applicant to supply such number of copies of the application as may reasonably be required, within such period as may reasonably be specified.

(5) 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the Welsh Ministers may allow, to comply with any requirement of this regulation, the application will be deemed to be withdrawn at the end of such period, and the fee will be refunded if the Welsh Ministers have not yet published a notice under regulation 12(1).

(6) An application under this regulation may be withdrawn at any time by notice to the Welsh Ministers, and the fee will be refunded if, at the time when the Welsh Ministers receive the notice of withdrawal, the Welsh Ministers have not yet published a notice under regulation 12(1).

(7) Where the Welsh Ministers receive an application under this regulation which may constitute or form part of a project serving national defence purposes, the Welsh Ministers must provide a copy of that application to the Secretary of State.

**Further information**

11.—(1) Paragraph (2) applies where the Welsh Ministers consider—

- (a) that the environmental statement fails to contain sufficient information of a description specified in any of the paragraphs of Part 2 of Schedule 1 to enable the environmental effects of the dredging to be fully considered; and
- (b) having regard in particular to current knowledge and methods of assessment, that the applicant can reasonably be required to supply further information of such description.

(2) Where this paragraph applies, the Welsh Ministers must request the applicant to supply such further information as the Welsh Ministers consider necessary and must notify the applicant of—

- (a) the number of copies of the further information that the applicant is required to supply; and
- (b) the period within which such further information must be supplied.

(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 this regulation, the application will be deemed to be withdrawn at the end of such period and the fee will be refunded if the Welsh Ministers have not yet published a notice under regulation 12(1).

**Publicity and consultation**

12.—(1) Where the Welsh Ministers receive —

- (a) an application made under regulation 10 which includes an environmental statement; or
- (b) further information supplied under regulation 11 or any other information provided by the applicant,

the Welsh Ministers must publish by public advertisement, as soon as reasonably practicable, a notice complying with the requirements of paragraph (2).

(2) The notice must contain the following information —

- (a) the applicant's name;
- (b) a statement that the applicant has made an application or, as the case may be, supplied further information or other information, to the Welsh Ministers under these Regulations;
- (c) a statement that the application is subject to an assessment of its effects on the environment under these Regulations;
- (d) that the Welsh Ministers will take a decision on the application under these Regulations and a statement that the application may either be granted, whether or not subject to conditions, or refused;
- (e) the address of the place in Wales at which copies of the application and any further or other information and any reports or advice which have been issued to the Welsh Ministers at that time, as the case may be, may be inspected;
- (f) a statement that inspection of the application, any further or other information, and any reports or advice which have been issued to the Welsh Ministers may be undertaken at that place, without charge, and at any reasonable time during a period which must be not less than eight weeks beginning with the date on which the notice is published;
- (g) the address from which copies of the application and any further or other information and any reports or advice which have been issued to the Welsh Ministers may be obtained and, if a charge is made under paragraph (3) for the supply of copies, the amount of the charge;
- (h) a statement that any person who wishes to make representations to the Welsh Ministers regarding the application or regarding any further or other information or any reports or

advice which have been issued to the Welsh Ministers may do so in writing within the period mentioned in sub-paragraph (f); and

(i) the address in Wales to which representations may be sent.

(3) A reasonable charge may be made for the provision of copies of the application or any further or other information or any reports or advice which have been issued to the Welsh Ministers, to any person who requests them.

(4) The Welsh Ministers must send to the appropriate consultation bodies and the owner (if the owner is not the applicant)—

(a) a copy of the application and, as soon as reasonably practicable, of any further or other information and of any reports or advice that have been issued to the Welsh Ministers, and

(b) a statement—

(i) that representations may be made to the Welsh Ministers regarding the application,

(ii) of the address in Wales to which representations may be sent, and

(iii) of the period, being not less than eight weeks beginning with the date on which notice of the application is first published in accordance with paragraph (1), within which representations may be made.

(5) Where the Welsh Ministers are aware of any other person (including any non-governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application, but is unlikely to become aware of it by means of the public advertisement, the Welsh Ministers must send a notice to such person containing the details set out in paragraph (2).

## **Decisions on applications**

**13.**—(1) Before deciding whether to grant or to refuse permission on an application under regulation 10, the Welsh Ministers must determine whether the application relates to a project which constitutes a habitats project unless, within the 12 months prior to the submission of the application, a preliminary determination has been made in response to an application under regulation 6(1)(b) that the same project would not constitute a habitats project.

(2) The applicant must provide such information as the Welsh Ministers may reasonably require to enable the Welsh Ministers to make the determination under paragraph (1).

(3) Before deciding whether to grant or to refuse permission for a project which the Welsh Ministers have determined would constitute a habitats project (whether under this regulation or under regulation 6(1)(b)), the Welsh Ministers must make an appropriate assessment of the implications for the European site affected, in view of its conservation objectives; and paragraph 2 of Schedule 3 applies for that purpose.

(4) Before deciding whether to grant or to refuse permission 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, to 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.

(5) In deciding whether to grant or to refuse permission, the Welsh Ministers must take into consideration—

(a) the information provided in the application;

(b) the environmental statement, where one has been provided;

(c) any further information supplied under regulation 11 and any other information submitted by the applicant;

- (d) any relevant representations made in response to the notice published under regulation 12(1), or by anyone to whom a copy of the application has been sent under regulation 12(4) or to whom a notice has been sent under regulation 12(5);
  - (e) any opinion forwarded to the Welsh Ministers under regulation 15(4);
  - (f) any reports and advice that have been issued to the Welsh Ministers;
  - (g) the report of any person appointed under paragraph (4); and
  - (h) any published policy of the Welsh Ministers in relation to the extraction of minerals by marine dredging.
- (6) The Welsh Ministers may only grant permission if —
- (a) the results of an assessment carried out under paragraph (3) establish that the relevant project will not, either alone or in combination with other plans or projects, affect the integrity of the European site; or
  - (b) in the event of a negative assessment of the implications for the site, the provisions set out in paragraph 2(7), or 2(8) and (9), of Schedule 3 apply.
- (7) A grant of permission —
- (a) may be subject to such conditions as the Welsh Ministers consider appropriate; including —
    - (i) conditions intended to implement any policy taken into account under paragraph (5) (h) which contains regional limits on the tonnage of minerals which may be dredged, and
    - (ii) conditions as to the fees, determined in accordance with regulation 25, to be paid in respect of the Welsh Ministers' expenses incurred in assessing and interpreting the results of any monitoring of compliance with the conditions attached to the permission carried out in accordance with such conditions;
  - and
  - (b) will be made to, and subject to any transfer under regulation 16, will ensure for the benefit of, the owner.
- (8) The Welsh Ministers must send notice of the decision to—
- (a) the applicant;
  - (b) the owner (if the owner is not the applicant);
  - (c) any person who has made representations in respect of the application; and
  - (d) the appropriate consultation bodies who were consulted under regulation 12(4);
- and the notice must state —
- (i) the main reasons for the decision,
  - (ii) the main considerations on which the decision is based including, if relevant, information about the public participation process,
  - (iii) where permission is granted, any conditions imposed under paragraph (7)(a), and, where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects, and
  - (iv) that the decision may be challenged and the procedures for doing so.
- (9) Within the period of 28 days beginning with the date of the decision, the Welsh Ministers must publish, in the same or similar manner in which notice relevant to the application was published under regulation 12, a notice containing—

- (a) a statement that the Welsh Ministers have granted or, as the case may be, refused permission;
- (b) a description of the dredging for which permission has been granted or, as the case may be, refused; and
- (c) the address in Wales at which any person may inspect a copy of the notice issued under paragraph (8).

### **Offences relating to applications and permissions**

**14.—**(1) A person commits an offence who, for the purposes of obtaining (whether for that person or another) the grant of a permission under regulation 13,—

- (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 a condition to which a permission is subject.

### **Projects likely to have significant effects on the environment in another EEA state**

**15.—**(1) Where—

- (a) the Welsh Ministers are aware that a relevant project is likely to have significant effects on the environment in another EEA state; or
- (b) a request is made by another EEA state, whose territory is likely to be significantly affected by such a relevant project,

the Welsh Ministers must, as soon as possible and not later than the publication of the notice referred to in regulation 12(1), carry out the actions specified in paragraph (2).

(2) The actions mentioned in paragraph (1) are that the Welsh Ministers must—

- (a) send to the affected state —
  - (i) details of the location and nature of the dredging,
  - (ii) any available information on its potential effect on the environment in the affected state, and
  - (iii) a description of the nature of the decision which may be made under these Regulations;
- (b) give the affected state a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide; and
- (c) publish in the London Gazette a notice containing the particulars mentioned in subparagraph (a) and indicating the address from which additional information may be obtained.

(3) Where an affected state indicates a desire to participate in the procedure for which these Regulations provide, the Welsh Ministers must, as soon as possible, send to that affected state such of the following information as has not already been provided to it in accordance with paragraph (2)—

- (a) a copy of any application made under regulation 10;
- (b) a copy of any further information supplied under regulation 11 or other information provided by the applicant;
- (c) a copy of any notice published under regulation 12(1);
- (d) copies of any reports and advice issued to the Welsh Ministers; and

- (e) relevant information regarding the procedure under these Regulations.
- (4) The Welsh Ministers must also ensure that any bodies with specific environmental responsibilities who have been consulted by the affected state and the public concerned are given an opportunity, before any application is decided, to forward to the Welsh Ministers, within a reasonable time, their opinion on the particulars and information supplied.
- (5) The Welsh Ministers must—
  - (a) enter into consultations with the affected state regarding, amongst other matters, the potential effects of the dredging on the environment of that affected state and the measures envisaged to reduce or eliminate such effects; and
  - (b) determine, in agreement with the affected state, a reasonable period of time for the duration of the consultation period.
- (6) Where the Welsh Ministers have consulted an affected state in accordance with paragraph (5) on the decision to be made on any application concerned, the Welsh Ministers must inform that affected state of the decision and must send to it a notice of the decision; 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) where permission is granted—
    - (i) any conditions imposed under regulation 13(7)(a), and
    - (ii) where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects.