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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 7**

**GENERAL**

**Fees**

- 25.** Subject to paragraph (3) the Welsh Ministers are to determine the fees to be paid —
- (a) by a prospective applicant in respect of the expenses of the Welsh Ministers of carrying out either or both of the activities described in paragraph (2);
  - (b) by an applicant in respect of the expenses of the Welsh Ministers of considering, publicising and deciding whether to grant or to refuse any application under regulation 10(1) or regulation 18(1);
  - (c) by the owner or holder of any permission in respect of the expenses of the Welsh Ministers of interpreting and assessing the results of any monitoring which is provided for by the conditions attached to the permission—
    - (i) of the manner in which the dredging permitted by that permission is being or has been carried out, and
    - (ii) of the effects of that dredging,by, in particular, scrutiny of electronic or written information including surveys.
- (2) The activities mentioned in paragraph 1(a) are —
- (a) providing an opinion under regulation 7(2); and
  - (b) providing the information relevant to the preparation of the environmental statement in accordance with regulation 8(3) and (4).
- (3) Fees under this section are to be determined by the Welsh Ministers with the consent of the Treasury, after consultation on the principles to be applied in determining the fees and the amounts of the fees with organisations appearing to the Welsh Ministers to represent persons who are likely to apply for permissions.

**Register**

- 26.**—(1) The Welsh Ministers must keep a register containing the information specified in paragraph (2).
- (2) The register must contain a copy, either in photographic or electronic form or both, of—
- (a) each determination made by the Secretary of State under regulation 5(2);
  - (b) each determination made by the Welsh Ministers under regulation 5(4);

- (c) each application for a preliminary determination under regulation 6(1);
- (d) each preliminary determination made by the Welsh Ministers in response to an application under regulation 6(1);
- (e) each opinion given by the Welsh Ministers under regulation 7(2);
- (f) each application for permission to carry out dredging made to the Welsh Ministers under regulation 10(1), including any environmental statement, and any accompanying plans and drawings;
- (g) any further information supplied under regulation 11(2), or any other information supplied by the applicant;
- (h) each notice published under regulation 12(1);
- (i) any reports and advice which are issued to the Welsh Ministers in relation to any application under these Regulations;
- (j) each determination made by the Welsh Ministers under regulation 13(1);
- (k) any information supplied by an applicant under regulation 13(2);
- (l) each decision of the Welsh Ministers under regulation 13(7), including a copy of the report of any person appointed under regulation 13(4) in respect of the application, details of any conditions subject to which permission was granted and the date of the decision;
- (m) each approval of a transfer given under regulation 16(2), including a copy of any conditions subject to which the approval was given;
- (n) each application for a variation of a permission made under regulation 18(1);
- (o) any information provided by the applicant or decision, determination or opinion of the Welsh Ministers in relation to an application to vary a permission to carry out dredging, under any regulation which is applied to an application under regulation 18(1) by regulation 19(1)(b) or regulation 19(3);
- (p) each determination made by the Welsh Ministers under regulation 18(3);
- (q) any information provided by an applicant for a variation under regulation 20(2);
- (r) each decision made by the Welsh Ministers under regulation 20(8) in relation to a proposed variation, including a copy of the report of any person appointed under regulation 20(6) in respect of the application, details of any conditions subject to which the variation was granted and the date of the decision;
- (s) each notice served by the Welsh Ministers under regulation 21(3)(a);
- (t) any information provided by the owner or holder of a permission in response to a request under regulation 21(3)(b);
- (u) the report of any person appointed under regulation 21(10);
- (v) each decision made by the Welsh Ministers under regulation 21(11);
- (w) each notice served by the Welsh Ministers under regulation 21(12);
- (x) the order of any court in any legal proceedings in respect of an offence under these Regulations;
- (y) any information supplied by an applicant under paragraph 2(2) of Schedule 3;
- (z) any information provided by the owner or holder of a permission under paragraph 3(4) of Schedule 3;
- (aa) each decision made by the Welsh Ministers to affirm, revoke or vary a permission under paragraph 3(5) of Schedule 3;
- (bb) each notice served by the Welsh Ministers under paragraph 4(1) of Schedule 3;

- (cc) each notice served by the Welsh Ministers under paragraph 5(1) or (5) of Schedule 3;
  - (dd) each decision made by the Welsh Ministers in respect of a review under paragraph 5(4) of Schedule 3, including a copy of the report of any person appointed under paragraph 5(3) of that Schedule in respect of the review, and the date of the decision;
  - (ee) any statement of reasons accompanying any of the above;
  - (ff) any monitoring scheme, report or other information submitted to the Welsh Ministers under a condition to which permission to carry out dredging, or consent to a transfer of a permission under regulation 16, was made subject;
  - (gg) any representation made or information provided to the Welsh Ministers by any person or body, and in particular the Secretary of State, the Department of the Environment in Northern Ireland or an EEA state, in connection with any function performed or to be performed by the Welsh Ministers under these Regulations; and
  - (hh) the order of any court in any legal proceedings in which the validity of any approval, decision, determination, opinion or other action of the Welsh Ministers under these Regulations was questioned.
- (3) The register must include an index.
- (4) The register must be available for inspection by the public at all reasonable hours, by prior appointment.
- (5) Where the register is kept using electronic storage, the Welsh Ministers may also make the register available for inspection by the public on a website maintained by the Welsh Ministers for that purpose.
- (6) On request by any member of the public and on payment of a reasonable fee, the Welsh Ministers must provide a copy of any document entered on the register.
- (7) Except where paragraph (8) applies, an entry in the register must be made within 28 days of—
- (a) the receipt by the Welsh Ministers of any application, representation, information, scheme, report or order;
  - (b) the giving or making of the relevant approval, decision, determination or opinion or the issuing of the relevant notice.
- (8) Where the Welsh Ministers are of the view that making an entry in the register in accordance with paragraph (7) may prejudice the fairness or speed of the process of the giving or making of any approval, decision, determination, or opinion under these Regulations, the entry must be made as soon as practicable after the approval, decision, determination or opinion has been made or given.

## **Penalties**

- 27.—**(1) A person who commits an offence under these Regulations is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on indictment, to a fine.
- (2) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, neglect on the part of an officer, that person, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (3) In this regulation, “officer” (“*swyddog*”), in relation to a body corporate means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body or a person purporting to act in that capacity.
- (4) For the purposes of paragraph (3), “director” (“*cyfarwyddwr*”), in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) Proceedings for an offence alleged to have been committed under these Regulations by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation.

(6) Proceedings for an offence under this regulation may be taken, and the offence may for all incidental purposes be treated as having been committed in any place in Wales.

(7) Proceedings for a declaration under regulation 3(2) may be taken, and the contravention which is complained of may for all incidental purposes be treated as having been committed in any part of Wales.

### **Territorial Waters Jurisdiction Act 1878**

**28.** Section 3 of the Territorial Waters Jurisdiction Act 1878(1) (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for an offence under these Regulations.

### **Local inquiries**

**29.**—(1) The Welsh Ministers may cause a local inquiry to be held for the purposes of the exercise of any function of the Welsh Ministers under these Regulations.

(2) In relation to a local inquiry held under these Regulations, subsections (2) to (5) of section 250 (power to direct inquiries) of the Local Government Act 1972(2) apply—

- (a) as they apply in relation to local inquiries held under that Act;
- (b) with the deletion of the words “local authority or” from subsection (4) (provisions as to Secretary of State’s costs of holding inquiries); and
- (c) as if references in subsections (4) and (5) (provisions as to orders for the payment of costs of parties to inquiries) to the Minister, were references to the Welsh Ministers.

### **Electronic communications**

**30.**—(1) A requirement in these Regulations that any application, approval, decision, determination, notice, opinion or request must be in writing is fulfilled where the recipient consents to receive it electronically and the document meets the criteria in paragraph (4) and “written” is to be construed accordingly.

(2) Where an application is made to the Welsh Ministers for any approval, decision, determination or opinion, under these Regulations using electronic communications, the person making the application will be taken to have agreed —

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application; and
- (c) that the deemed agreement under this paragraph will subsist until that person gives notice to revoke the agreement.

(3) Where a person is no longer willing to accept the use of electronic communications in relation to any application under these Regulations, that person must give notice to the Welsh Ministers and

(1) 1878 c. 73.

(2) 1972 c. 70. Subsection (2) was amended by the Statute Law (Repeals) Act 1989 (c. 43). Subsection (3) was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48). Subsection (4) was amended by the Housing and Planning Act 1986 (c. 63), section 49(2), and Schedule 12, Part III.

such revocation will be final and will take effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(4) The criteria referred to in paragraph (1) are that the document transmitted by the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Nothing in this regulation will prevent the Welsh Ministers from requiring an applicant for permission under regulation 10 or the applicant in relation to any application under regulation 6(1), 7(2), 16(2) or 18(1) or the owner or holder of a permission in the case of a proposed revocation or variation under regulation 21, to provide such number of printed copies of any document as the Welsh Ministers will reasonably require, notwithstanding that the document has already been transmitted to the Welsh Ministers electronically.

(7) Where the electronic communication is received by the recipient outside the recipient’s business hours, it will be taken to have been received on the next working day; and, for this purpose, “working day” (“*diwrnod gwaith*”) means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(8) In this regulation—

- (a) the expression “address” (“*cyfeiriad*”) includes any number or address used for the purpose of such communications or storage; and
- (b) “electronic communication” (“*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000(3).

### **Transitional provisions**

**31.**—(1) An application under either of the procedures mentioned in paragraph (3) which remains undetermined at commencement, and which if it had been made under these Regulations would fall within the scope of the Regulations, will (unless withdrawn) be treated as an application for permission or, as the case may be, variation duly made under these Regulations if it includes an environmental statement.

(2) Steps taken in accordance with those procedures in relation to an application that is treated as mentioned in paragraph (1) will be treated as steps taken under regulation 12, to the extent that the Welsh Ministers are satisfied that the steps as taken by the applicant publicise that application to substantially the same extent as an application would have been publicised by the Welsh Ministers under regulation 12.

(3) The procedures referred to in paragraph (1) are those set out in —

- (a) the document entitled “Offshore Dredging for Sand, Gravel and other Minerals”, dated April 1989, and published by the Department of the Environment and the Welsh Office; and
- (b) the document entitled “Government View: New Arrangements for the Licensing of Minerals Dredging”, dated May 1998, and published by the Department of the Environment, Transport and the Regions and the Welsh Office.

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(3) 2000 c. 7 Section 15 was amended by Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

(4) Where a permission is granted or varied as a result of any application to which this regulation applies, these Regulations will apply to it as they do to permissions granted as a result of an application under regulation 10.

### **Amendments of Regulations, and savings**

**32.**—(1) In Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999<sup>(4)</sup>, in column 1 of the table, in paragraph 2(c), after “fluvial” insert “or marine”.

(2) The amendment made by paragraph (1) does not have effect in relation to—

- (a) any application for planning permission, or for the amendment of an existing planning permission lodged or received by a local planning authority before commencement;
- (b) any appeal in relation to such an application;
- (c) any matter in relation to which, before commencement, a local planning authority has issued an enforcement notice under section 172 (issue of enforcement notice) of the Town and Country Planning Act 1990<sup>(5)</sup>; or
- (d) any development begun before commencement in reliance on planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995<sup>(6)</sup>.

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<sup>(4)</sup> S.I. 1999/293, amended by S.I. 2000/2867, 2006/3099 and 2006/3295.

<sup>(5)</sup> 1990 c. 8. Section 172 was substituted by the Planning and Compensation Act 1991 (c. 34), Section 5.

<sup>(6)</sup> S.I. 1995/418; amended by S.I. 1996/528.