
WELSH STATUTORY INSTRUMENTS

2012 No. 737 (W.97)

COMMONS, WALES

The Works on Common Land, etc.
(Procedure) (Wales) Regulations 2012

<i>Made</i>	- - - -	<i>7 March 2012</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>8 March 2012</i>
<i>Coming into force</i>	- -	<i>1 April 2012</i>

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales as the appropriate national authority by sections 39(6), 40 and 59(1) of the Commons Act 2006⁽¹⁾, and now exercisable by them⁽²⁾, make the following Regulations:

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Works on Common Land, etc. (Procedure) (Wales) Regulations 2012.

(2) These Regulations come into force on 1 April 2012.

(3) These Regulations apply in relation to Wales.

Scope and Interpretation

2.—(1) In Part 2 of these Regulations—

(a) regulations 5 to 18 apply to applications to the Welsh Ministers under section 38(1) of the 2006 Act for consent to carry out restricted works on common land;

(b) regulations 19 and 20 apply to applications to the Welsh Ministers under section 39(5) of the 2006 Act to vary or revoke any modification or condition imposed in relation to a consent granted pursuant to an application under section 38(1); and

⁽¹⁾ 2006 c. 26. Section 61(1) contains definitions of “appropriate national authority” and “regulations”.

⁽²⁾ The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(c) regulation 21 applies to applications to the Welsh Ministers under section 23(2) of the National Trust Act 1971(3).

(2) In these Regulations—

“the 2006 Act” (“*Deddf 2006*”) means the Commons Act 2006;

“common land” (“*tir comin*”) means land of a type specified in section 38(5)(a) and (b) of the 2006 Act;

“the determining authority” (“*yr awdurdod sy'n penderfynu*”) means—

- (a) the Welsh Ministers, where they are exercising functions in relation to the determination of an application of any of the kinds referred to in paragraph (1); or
- (b) a person who is exercising functions in relation to the determination of such an application pursuant to an appointment under regulation 3(1) (other than an inspector who is appointed to carry out a hearing, inquiry or site inspection but not to determine an application);

“electronic communication” (“*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000(4);

“inspector” (“*arolygydd*”) means—

- (a) where the Welsh Ministers are the determining authority, a person appointed by the Welsh Ministers to carry out a hearing, inquiry or site inspection;
- (b) where another person is the determining authority, the person who conducts a hearing, inquiry or site inspection;

“notice of application” (“*hysbysiad o gais*”) means a notice containing the details specified in regulation 7(2).

Appointment of a person to exercise functions of the Welsh Ministers

3.—(1) The Welsh Ministers may appoint a person to exercise any or all of their functions in relation to—

- (a) applications of all or any of the kinds mentioned in paragraph (1) of regulation 2; or
- (b) one or more particular applications of any of those kinds.

(2) An appointment under paragraph (1) must be in writing.

(3) The Welsh Ministers may at any time, by giving notice in writing to a person appointed under paragraph (1) (an “appointed person”)—

- (a) revoke the appointment generally;
- (b) revoke the appointment insofar as it relates to a particular application which has not been determined by the appointed person before that time; or
- (c) revoke the authority of the appointed person to exercise a particular function in relation to an application.

(4) A notice under paragraph (3) will not affect the validity of anything done by the appointed person before the notice is given.

(3) 1971 c.vi, as amended by paragraph 4 of Schedule 4 to the 2006 Act. Sections 39 and 40 of the 2006 Act apply in relation to an application under section 23(2) of the National Trust Act 1971 by virtue of section 23(2A) of that Act, as inserted by paragraph 4(3) of Schedule 4 to the 2006 Act.

(4) 2000 c. 7. The definition of “electronic communication” was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

Electronic communications

4. Any requirement imposed by these Regulations for a person to send a notice or document to another person may be met by means of an electronic communication if—

- (a) it results in the information contained in that notice or document being available to the other person in a form similar to the form in which it would appear in a notice or document sent in printed form; and
- (b) the other person consents to the notice or document being sent by those means.

PART 2

Works on Common Land

Application for consent to carry out restricted works

5.—(1) An application to which this regulation applies must—

- (a) be made in writing on a form provided by the Welsh Ministers;
- (b) include the information specified in the form; and
- (c) be signed by the applicant or the applicant's representative.

(2) The application must be accompanied by—

- (a) a map showing the common land on which the works are proposed to be carried out, with—
 - (i) the boundary of the common land marked in green; and
 - (ii) the site of the proposed works marked in red;
- (b) if appropriate, a plan or drawing of the proposed works; and
- (c) if the land is registered common land, a copy of the relevant entry in the register of common land.

Management of application

6.—(1) As soon as practicable after receiving an application, the determining authority must send an acknowledgement of receipt to the applicant, which must include—

- (a) the reference number allocated to the application; and
- (b) a postal address and an e-mail address to which written communications to the determining authority about the application may be sent.

(2) The determining authority must, either when it receives the application or as soon as practicable after the expiry of the period allowed for making representations under regulation 10, decide whether the application is to be dealt with—

- (a) on the basis of written representations,
- (b) at a hearing, or
- (c) at a public inquiry,

and notify the applicant of that decision.

(3) If the determining authority is the Welsh Ministers and they decide that the application is to be dealt with at a hearing or a public inquiry, they must appoint an inspector to conduct any hearing or inquiry and provide a report and recommendation to the Welsh Ministers.

(4) The determining authority may, either when it acknowledges receipt of the application or at any time subsequently, direct the applicant to—

- (a) provide any information or documents omitted from the application;
 - (b) provide any further information or documents necessary to enable the application to be determined; or
 - (c) send notice of application to persons specified in the direction, or post a notice of application in places specified in the direction, in addition to the requirements in regulation 7(1).
- (5) The determining authority may specify a time for complying with any directions given under this regulation.

Publicising the application

- 7.—(1) Not later than seven days after making an application the applicant must—
- (a) publish a notice of the application in a newspaper circulating in the area in which the works are proposed;
 - (b) for not less than 28 days display a notice of the application at the principal places of entry to (or, if there are no such places, at a conspicuous place on the boundary of) the common land on which the works are proposed; and
 - (c) send a notice of the application to—
 - (i) the owner of the land on which the works are proposed (if the owner is not the applicant);
 - (ii) any other person occupying the land;
 - (iii) if the land is registered common land, the occupier of any property shown in the register of common land as being property to which rights of common over the land are attached and who the applicant believes to be exercising those rights or likely to be affected by the application;
 - (iv) any other person known to the applicant to be entitled to exercise rights of common over the land and who the applicant believes to be exercising those rights or likely to be affected by the application;
 - (v) the community council (if any) for the area in which the works are proposed.
- (2) The notice must contain the following details—
- (a) the name of the applicant;
 - (b) the name of the common land affected by the proposed works;
 - (c) a description of the proposed works, and their location;
 - (d) a postal address and an e-mail address to which any representations may be sent;
 - (e) the date on which the period for making representations expires, which must not be less than 28 days after the date on which paragraph (1) is fully complied with;
 - (f) an address at which the application form and the documents listed in regulation 5(2) are available for inspection;
 - (g) the times and dates on which such inspection may take place, which must be in accordance with regulation 8(2); and
 - (h) an address from which a copy of the application form and accompanying documents may be obtained.
- (3) The applicant must also send a notice of application to such other persons, or display a notice of application in such further places, as the determining authority may direct under regulation 6(4).
- (4) The applicant must give notice to the determining authority when the applicant has complied with paragraphs (1) to (3), which must—

- (a) include details of—
 - (i) the newspaper in which the notice of application was published, and the date of publication;
 - (ii) the date on which a notice of application was posted on the land;
 - (iii) the persons to whom a notice of application was sent, the date or dates on which they were sent, and the nature of each such person’s interest in the land (if any);
 - (iv) the place at which a notice of application was posted on the land (if necessary, by reference to a map); and
- (b) be accompanied by a copy of the page of the newspaper in which the notice of application was published.

(5) Where a notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 28 days referred to in paragraph (1)(b) has elapsed, the applicant will be treated as having complied with the requirements of that paragraph if the applicant has taken reasonable steps to protect the notice and, if need be, replace it.

Inspection and supply of copies of documents

8.—(1) The applicant must ensure that copies of the application and the accompanying documents are available for inspection at the address specified in the notice of application for that purpose, at the times and dates specified in the notice of application.

(2) Subject to paragraph (5), the times and dates at which the application and accompanying documents must be available for inspection must include all normal office hours during a period of not less than 28 days ending on the expiry of the period for making representations.

(3) Any person may request a copy of the application and any accompanying documents from the applicant by writing to the address specified in the notice of application for that purpose.

(4) Subject to paragraph (5), the applicant must respond to a request under paragraph (3) by supplying the requested documents as soon as practicable.

(5) The determining authority may give a direction authorising other arrangements for the inspection or supply of copies of documents, if satisfied that the applicant cannot reasonably be expected to comply with the obligation in paragraph (2) or (4).

Non-compliance

9. If the applicant fails to comply with regulation 7 or 8, or with any directions given under regulation 6, the determining authority may—

- (a) treat the application as withdrawn;
- (b) give directions to the applicant to remedy the non-compliance (and, if appropriate, extend the period allowed for making representations); or
- (c) waive the non-compliance, if the determining authority is satisfied that it would be unreasonable to require compliance and no-one is likely to be prejudiced by the non-compliance.

Representations

10.—(1) Any person may send representations about the proposed works to the determining authority by the date specified in the notice of application.

- (2) Representations under paragraph (1) must—

- (a) state the name and address of the person making them, and the nature of that person's interest in the land or proposed works (if any);
 - (b) be made in writing and signed by the person making them; and
 - (c) state the grounds on which they are made.
- (3) As soon as reasonably practicable after the expiry of the period for making representations, the determining authority must either—
- (a) notify the applicant that no representations have been made; or
 - (b) send the applicant a copy of all the representations received.
- (4) Where the applicant has received a copy of representations under paragraph (3)(b), the applicant may reply to the determining authority within 21 days of such receipt, setting out a response to them.
- (5) A reply under paragraph (4) must be in writing, and signed by the applicant or the applicant's representative.
- (6) The requirements in paragraphs (2) and (5) for a document to be signed are satisfied, in the case of a document sent by means of an electronic communication in accordance with these Regulations, by the person who is required to sign the document typing that person's name or producing that person's signature by computer or other mechanical means.

Notice of hearing or inquiry

- 11.**—(1) If the determining authority decides to hold a hearing or inquiry, it must ensure that a notice of hearing or inquiry is—
- (a) published on an appropriate website, and in a newspaper circulating in the area in which the works are proposed;
 - (b) sent to the applicant and to any person who has made representations in accordance with regulation 10; and
 - (c) if the determining authority considers it necessary, publicised by such other means or sent to such other persons as may be appropriate to bring the hearing or inquiry to the attention of persons likely to be affected by the works.
- (2) The notice of hearing or inquiry must include—
- (a) a description of the proposed works, and their location;
 - (b) a statement including that a hearing or inquiry (as the case may be) will be held in connection with the proposed works;
 - (c) the date, time and place of the hearing or inquiry and the name of the inspector; and
 - (d) an address from which a copy of the application form and accompanying documents may be obtained from the determining authority.
- (3) The date fixed for the start of the hearing or inquiry must not be less than six weeks after paragraph (1) has been complied with.

Hearings and inquiries: general provisions

- 12.**—(1) Subject to the following paragraphs of this regulation, and to regulations 13 and 15, the procedure at a hearing or inquiry is to be determined by the inspector.
- (2) Any person interested in the subject-matter of a hearing or inquiry may appear at the hearing or inquiry in person or by a representative.
- (3) The inspector may, at any stage of a hearing or inquiry, prevent any person from—

- (a) giving evidence,
- (b) cross-examining a person giving evidence, or
- (c) presenting any matter,

if the inspector considers it to be irrelevant or repetitious.

(4) The inspector may, if the inspector considers that a person is behaving in a disruptive manner—

- (a) require the person to leave a hearing or inquiry,
- (b) prevent the person from participating in the hearing or inquiry by giving evidence, cross-examining a person giving evidence, or presenting any matter, or
- (c) permit the person to remain at, or participate in, the hearing or inquiry only on specified conditions.

(5) The inspector may proceed with a hearing or inquiry in the absence of any person entitled to appear at it.

(6) The inspector may take into account any written representations or evidence or any other document received by the inspector from any person before or during a hearing or inquiry, provided that the inspector discloses it at the hearing or inquiry.

(7) The inspector may—

- (a) adjourn a hearing or inquiry to continue on another date;
- (b) adjourn a hearing or inquiry to the site of the proposed works, and conduct part of the hearing or inquiry at that site in conjunction with a site inspection.

Procedure at hearings

13.—(1) A hearing is to take the form of a discussion led by the inspector.

(2) Subject to regulation 12(3) to (5)—

- (a) the applicant is entitled to give, or to call another person to give, oral evidence; and
- (b) any other person may give oral evidence with the permission of the inspector.

(3) Cross-examination is not permitted unless the inspector decides that it is necessary to ensure a sufficient examination of the issues.

Pre-inquiry meeting

14.—(1) Where it has been decided to hold an inquiry, the inspector may, if the inspector considers it desirable, hold a pre-inquiry meeting to determine the matters to be addressed and the procedure to be followed at the inquiry.

(2) If the inspector decides to hold a pre-inquiry meeting, the inspector must give not less than two weeks notice in writing to—

- (a) the applicant;
- (b) any person who has made written representations about the application; and
- (c) any other person whose presence at the pre-inquiry meeting the inspector considers desirable.

(3) Paragraphs (1) to (5) of regulation 12 (so far as relevant) apply to pre-inquiry meetings as they apply to inquiries.

(4) The inspector may, at a pre-inquiry meeting—

- (a) give directions to the applicant and any other person wishing to appear at the inquiry about things to be done in preparation for the inquiry; and
 - (b) specify a date or dates by which any such directions must be complied with.
- (5) In particular, the inspector may direct any person wishing to give evidence at the inquiry to—
- (a) send the inspector a written statement of that evidence; and
 - (b) send a copy of that written statement to such other persons as the inspector may specify.

Procedure at inquiries

15.—(1) At the start of an inquiry, the inspector must—

- (a) identify the main issues to be considered at the inquiry;
- (b) identify any matters on which the inspector requires further explanation from any person appearing at the inquiry; and
- (c) explain the procedure to be followed at the inquiry.

(2) Paragraph (1)(a) does not preclude other issues from being considered, or raised by persons appearing, at the inquiry.

(3) If a person giving evidence at the inquiry has provided a written statement of evidence in accordance with a direction under regulation 14(5), the inspector may direct that—

- (a) the written statement is to be treated as the person’s evidence, or as part of the person’s evidence; and
- (b) other parties at the inquiry may cross-examine the person on the written statement.

Site inspections

16.—(1) Where an application is to be determined without a hearing or inquiry, the determining authority may at any time before determining the application appoint or assign an inspector to inspect the site of the proposed works and to provide a report.

(2) An inspector carrying out a hearing or inquiry may inspect the site of the proposed works.

(3) Where an inspector intends to make a site inspection under paragraph (1) or (2), the inspector must ask the applicant whether the applicant wishes to be present or be represented.

(4) If the applicant states that the applicant wishes to be present or be represented, the inspector must give the applicant reasonable notice of the date and time of the inspection, and give the applicant or the applicant’s representative the opportunity to be present.

(5) The inspector is not required to postpone an inspection if the applicant or the applicant’s representative is not present at the appointed time.

Changes of procedure

17.—(1) Where the determining authority has notified the applicant that a hearing or inquiry is to be held in relation to an application, it may at any time before the conclusion of the hearing or inquiry decide—

- (a) to cancel the hearing or inquiry and determine the application by way of written representations; or
- (b) to hold a hearing instead of an inquiry, or vice versa.

(2) The determining authority must consult the applicant before deciding to change the procedure for determining an application.

Determination of application

18.—(1) As soon as practicable after considering—

- (a) the application and all representations made in accordance with regulation 10,
- (b) any report by an inspector following a site inspection, and
- (c) where a hearing or inquiry has been held, either—
 - (i) the evidence presented at the hearing or inquiry (if the determination is being made by the inspector who heard the evidence), or
 - (ii) the report and recommendation of the inspector (if the determination is not being made by the inspector),

the determining authority must determine whether or not to grant consent to the proposed works, and notify the applicant in writing of that decision.

(2) The decision must state, with reasons, whether consent to the proposed works is—

- (a) granted as sought in the application;
- (b) granted only in part, or subject to modifications or conditions; or
- (c) refused.

(3) Where an inspector has produced a report following a hearing, inquiry or site inspection, the notification of the decision sent to the applicant must be accompanied by a copy of that report.

(4) The determining authority must publish the decision, and the reasons for it, on an appropriate website.

Application to vary or revoke modifications or conditions

19.—(1) Where a consent imposes modifications or conditions, any application under section 39(5) of the 2006 Act for those modifications or conditions to be varied or revoked must be made within 3 months of the date on which the applicant is notified of the decision to grant consent.

(2) The application must—

- (a) be in writing;
- (b) identify the modification or condition which the applicant wishes to vary or revoke;
- (c) describe the variation sought, and give reasons for it; and
- (d) be signed by the applicant or the applicant's representative.

Action after receiving an application to revoke or vary modifications or conditions

20.—(1) On receiving an application referred to in regulation 19(1), the determining authority may—

- (a) determine the application; or
- (b) give directions to the applicant to notify specified persons of the application, and allow them an opportunity to make representations before determining the application.

(2) The determining authority must—

- (a) notify the applicant in writing of its decision and the reasons for it;
- (b) publish the decision, and the reasons for it, on an appropriate website.

Applications for consent to works on National Trust land

21.—(1) Regulations 5 to 18 apply in relation to an application under section 23(2) of the National Trust Act 1971⁽⁵⁾, as if it were an application under section 38(1) of the 2006 Act.

(2) An application by the National Trust must, in addition to the matters required by regulation 5, certify that the proposed works are within the powers of the National Trust.

(3) Regulations 19 and 20 apply in relation to an application under section 39(5) of the 2006 Act to vary or revoke any modification or condition imposed in relation to any consent granted upon an application under section 23(2) of the National Trust Act 1971.

7 March 2012

John Griffiths
Minister for Environment and Sustainable
Development, one of the Welsh Ministers

(5) 1971 c.vi, as amended by paragraph 4 of Schedule 4 to the 2006 Act. Sections 39 and 40 of the 2006 Act apply in relation to an application under section 23(2) of the National Trust Act 1971 by virtue of section 23(2A) of that Act, as inserted by paragraph 4(3) of Schedule 4 to the 2006 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, prescribe the procedure for applications to the Welsh Ministers under section 38 of the Commons Act 2006 (“the 2006 Act”) for consent to carry out restricted works on common land and certain related types of applications. The term 'restricted works' for the purposes of these Regulations, is defined in section 38(2), (3) and (4) of the 2006 Act.

These Regulations enable the Welsh Ministers to appoint a person to exercise their functions in relation to such applications (regulation 3).

They include provisions about—

- (a) making and publicising applications (regulations 5, 7, 8 and 19);
- (b) making representations in relation to applications (regulation 10);
- (c) the management and determination of applications, including provision for holding site inspections, hearings or inquiries in appropriate cases (regulations 6, 9, 11-18 and 20); and
- (d) applications for consent to works on National Trust land (regulation 21).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ or online from www.wales.gov.uk.