WELSH STATUTORY INSTRUMENTS

2012 No. 737 (W.97)

COMMONS, WALES

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

Made - - - -	*7 March 2012*
Laid before the National Assembly for Wales - -	*8 March 2012*
Coming into force - -	*1 April 2012*

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—