WELSH STATUTORY INSTRUMENTS

2011 No. 925 (W.134)

ENVIRONMENTAL PROTECTION, WALES
LICENSING (MARINE), WALES
MARINE POLLUTION, WALES
TRIBUNALS AND INQUIRIES, WALES

The Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011

Made - - - -	*22 March 2011*
Coming into force - -	*6 April 2011*

The Welsh Ministers, as the appropriate licensing authority under section 113(4)(b) of the Marine and Coastal Access Act 2009(**1**), make these Regulations in exercise of the powers conferred by sections 73 and 316(1) of that Act.

In accordance with section 316(6)(b) and (7)(c) of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, the National Assembly for Wales.

PART 1

Introduction

Title and commencement

1.—(1) The title of these Regulations is the Marine Licensing (Appeals Against Licensing Decisions) (Wales) Regulations 2011.

(2) These Regulations come into force on 6 April 2011.

(**1**) 2009 c. 23.

Application

2. These Regulations apply in relation to any licensable marine activity for which the Welsh Ministers are the appropriate licensing authority under section 113(4)(b) of the Marine and Coastal Access Act 2009(**2**).

Interpretation

3. In these Regulations—

"the Act" (" *y Ddeddf*") means the Marine and Coastal Access Act 2009;

"the appointed person" ("*y person penodedig*") means the person appointed under regulation 5(1);

"document" ("*dogfen*") includes a map, photograph or report;

"the Licensing Authority" ("*yr Awdurdod Trwyddedu*") means the Welsh Ministers acting in their capacity as the appropriate licensing authority under section 113(4)(b) of the Marine and Coastal Access Act 2009;

"marine licence" ("*trwydded morol*") means a licence granted under Part 4 of the Act;

"relevant time limits" ("*terfynau amser perthnasol*") means—

(a) the time limits specified in these Regulations or in any direction given or requirement made by the appointed person by virtue of these Regulations;

(b) but sub-paragraph (a) is subject to regulation 25(1).

"start date" ("*dyddiad dechrau*") has the meaning given by regulation 8(3);

"valid notice of appeal" ("*hysbysiad apêl dilys*") means a notice of appeal that—

(a) complies with regulation 7(1);

(b) was accompanied by the documents required by regulation 7(2); and

(c) was received by the Welsh Ministers within the relevant time limit.

PART 2

Appeals — general

Appeal against marine licensing decisions

4.—(1) A person who has applied for a marine licence may by notice appeal to the Welsh Ministers against a decision taken under section 71 of the Act (refusal of licence or grant subject to conditions etc).

(2) Appeals must be made in accordance with these Regulations.

Determination by appointed person

5.—(1) The Welsh Ministers must appoint a person ("the appointed person") to —

(a) determine, upon receipt of a notice of appeal pursuant to regulation 4(1), whether the notice received is a valid notice of appeal and if so;

(**2**) By virtue of section 113(4)(b) of the Marine and Coastal Access Act 2009, the Welsh Ministers are the appropriate licensing authority as respects anything done in the course of carrying on licensable marine activities in Wales and the Welsh inshore region, other than activities for which the Secretary of State is the licensing authority under section 113(4)(a) and (5) of that Act. See section 322(1) for a definition of that region.

(b) determine the appeal.

(2) Appeals must be determined in accordance with these Regulations.

(3) An appointment under paragraph (1)—

(a) must be in writing;

(b) may relate to any particular appeal specified in the appointment or to appeals of a class or description so specified;

(c) may be subject to such conditions as may be specified in the appointment;

(d) may provide for payment to be made to the appointed person.

(4) In respect of any appeal that has not been determined the Welsh Ministers may revoke an appointment under paragraph (1) if they are—

(a) notified in writing by the appointed person; or

(b) are otherwise satisfied;

that the appointed person is unable to carry out the requirements of paragraph (1).

(5) Where an appointment is so revoked in respect of any appeal, the Welsh Ministers must, as soon as practicable, appoint another person under paragraph (1) to determine the appeal.

(6) Where a new appointment is made, the consideration of the appeal, or any hearing or inquiry in connection with it, must be begun afresh.

(7) But nothing in paragraph (6) requires any person to be given an opportunity to make fresh representations or comments or to modify or withdraw any representations or comments already made.

PART 3

Starting the appeal

Time limit for the notice of appeal

6. Notice of an appeal must be received by the Welsh Ministers within the period of 6 months beginning with the date of the decision to which the appeal relates.

Contents of the notice of appeal

7.—(1) A notice of appeal must include—

(a) the name, address (including any e-mail address) and telephone number of the appellant and any agent acting for the appellant;

(b) a statement of the grounds of appeal;

(c) a statement as to whether the appellant wishes to have the appeal dealt with by way of written representations, a hearing or an inquiry;

(d) a list of all the documents, including dates (where any document is dated), specified in paragraph (2).

(2) A notice of appeal must be accompanied by—

(a) a copy of the decision to which the appeal relates; and

(b) a copy of all documents upon which the appellant wishes to rely.

Decision as to appeal procedure and start date

8.—(1) The appointed person must, as soon as practicable after determining the validity of a notice of appeal, decide whether the appeal is to be determined by means of written representations, a hearing or an inquiry.

(2) The appointed person must notify the appellant and the Licensing Authority of that decision.

(3) The date of that notification is the start date for the appeal.

(4) A decision under paragraph (1) may be varied by a subsequent decision under that paragraph at any time before the appeal is determined.

(5) But before making such a variation, the appointed person must consult the appellant and the Licensing Authority.

(6) Where the decision referred to in paragraph (1) is varied—

(a) the appointed person must notify the appellant, the Licensing Authority and any other person who has made written representations in respect of the appeal, of the variation;

(b) anything done in relation to the former appeal procedure which could have been done under any corresponding provision of these Regulations relating to the new appeal procedure has effect as if done under that corresponding provision; and

(c) the appointed person may give consequential directions as to the procedure.

(7) Nothing in paragraphs (4) to (6) affects the start date under paragraph (3).

(8) In making a decision under paragraph (1), the appointed person must have regard to any criteria published by the Welsh Ministers.

PART 4

Action following the start date

Notice to interested persons

9.—(1) The Licensing Authority must, within the period of 2 weeks beginning with the start date, give notice that an appeal has been lodged—

(a) to any person (other than the appellant) who has made representations in writing to the Licensing Authority in respect of the application to which the appeal relates; and

(b) to any other person it considers likely to have an interest.

(2) The notice must state—

(a) the start date;

(b) the name and location of the site to which the appeal relates;

(c) the name of the appellant;

(d) that the appeal will be determined by way of written representations, a hearing or an inquiry (as the case may be);

(e) that, within the period of 4 weeks beginning with the date of the notice, the recipient may make written representations to the appointed person;

(f) the address to which such representations must be sent;

(g) that any representations received will be sent to the appellant and the Licensing Authority; and

(h) that if the recipient makes representations, the recipient will be notified by the appointed person of the date of any hearing or inquiry that may be held.

(3) The notice must be accompanied by a copy of the decision to which the appeal relates.

(4) The Licensing Authority must, within the period of 2 weeks beginning with the start date, send to the appointed person and the appellant—

(a) a list of the persons to whom, and the dates on which, notice under paragraph (1) was given; and

(b) copies of all representations referred to in paragraph (1)(a).

Representations and comments

10.—(1) Where an appeal is to be determined by way of written representations—

(a) the Licensing Authority must, within the period of 6 weeks beginning with the start date, send to the appointed person any representations it wishes to make on the appeal together with any documents it wishes to rely on;

(b) if the appellant wishes to make representations on the appeal in addition to the statement of the grounds of appeal referred to in regulation 7(1)(b), or the documents accompanying it referred to in regulation 7(2), the appellant must send those representations to the appointed person within the period of 6 weeks beginning with the start date.

(2) Where an appeal is to be determined by way of hearing or inquiry, the appellant and the Licensing Authority must each, within the period of 6 weeks beginning with the start date, send to the appointed person a statement containing full particulars of the case they propose to put forward at the hearing or inquiry and a list of any documents they propose to refer to or put in evidence.

(3) At the end of the period of 6 weeks beginning with the start date, the appointed person must—

(a) where the appeal is to be determined by way of written representations—

(i) send a copy of the Licensing Authority's representations to the appellant; and

(ii) send a copy of any representations made by the appellant under paragraph (1)(b) to the Licensing Authority

(b) where the appeal is to be determined by way of hearing or inquiry, send a copy of the Licensing Authority's statement and list of documents to the appellant and a copy of the appellant's statement and list of documents to the Licensing Authority;

(c) in all cases, send, at the same time, copies of any other representations received by the appointed person in relation to the appeal, to the appellant and the Licensing Authority.

(4) The appellant and the Licensing Authority may, within the period of 9 weeks beginning with the start date, send comments on those representations or statements to the appointed person.

(5) The appointed person must, as soon as practicable after that 9 week period, send a copy of the Licensing Authority's comments to the appellant and at the same time, send a copy of the appellant's comments to the Licensing Authority.

PART 5

Hearings and inquiries

Scope

11. This Part applies if an appeal is to be determined by way of hearing or inquiry (but certain provisions apply only to hearings or only to inquiries).