
STATUTORY INSTRUMENTS

2012 No. 738 (W.98)

COMMONS, WALES

**The Deregistration and Exchange of Common Land
and Greens (Procedure) (Wales) Regulations 2012**

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| <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 17(10), 24(1), (2) and (5) 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 Deregistration and Exchange of Common Land and Greens (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) These Regulations apply to applications to the Welsh Ministers under section 16 of the 2006 Act for the deregistration, or the deregistration and exchange, of land registered as common land or as a town or village green.

(2) In these Regulations—

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

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

(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).

- (a) the Welsh Ministers, where they are exercising functions in relation to the determination of an application under section 16 of the 2006 Act; 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(3);

“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; or
- (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);

“register” (“*cofrestr*”) means a register of common land or a register of town or village greens, and “registered” (“*cofrestredig*”) and “registration” (“*cofrestriad*”) are to be interpreted accordingly.

Appointment of person to exercise functions of Welsh Ministers

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

- (a) applications under section 16 of the 2006 Act generally; or
- (b) one or more particular applications under that section.

(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.

Electronic communication

4. Any requirement imposed by or under 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.

(3) 2000 c. 7. The definition of “electronic communication” was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

PART 2

Making and Determination of Applications

Application for deregistration of land

- 5.—(1) An application under section 16 of the 2006 Act 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, or by a representative of, every applicant.
- (2) The application must be accompanied by—
- (a) an Ordnance Map, at a scale of not less than 1:2,500 if available, and in any case not less than 1:10,000, showing—
 - (i) the boundary of the release land marked in red;
 - (ii) if the release land constitutes part of the land in a larger register unit, the boundary of the land in that register unit marked in dark green; and
 - (iii) the boundary of any replacement land marked in light green; and
 - (b) a copy of the entry in the register which relates to the release land or land including it.

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 deadline for persons to make 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 the 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 a 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 application in a newspaper circulating in the area in which the release land and any replacement land are situated;
 - (b) for not less than 28 days display a notice of application at the principal places of entry to (or, if there are no such places, at a conspicuous place on the boundary of)—
 - (i) the release land; and
 - (ii) the replacement land (if any); and
 - (c) send a notice of application to—
 - (i) any person (other than the applicant) occupying the release land;
 - (ii) the occupier of any property shown in the register as being property to which rights of common over the release land are attached and whom the applicant believes to be exercising those rights or likely to be affected by the application;
 - (iii) any other person known to the applicant to be entitled to exercise rights of common over the release land and whom the applicant believes to be exercising those rights or likely to be affected by the application; and
 - (iv) the community council or councils (if any) for the area in which the release land and the replacement land are situated.
- (2) The notice must contain the following details—
- (a) the name of the applicant;
 - (b) the name of the common land or town or village green affected by the proposal;
 - (c) the location and area in square metres of the release land;
 - (d) whether the application includes a proposal for land to be registered as replacement land and, if so, the location and area in square metres of the replacement land;
 - (e) a brief statement of the reason for the application;
 - (f) a postal address and an e-mail address to which any representations may be sent;
 - (g) 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;
 - (h) an address at which the application form and the documents listed in regulation 5(2) are available for inspection;
 - (i) the times and dates on which such inspection may take place, which must be in accordance with regulation 8(2); and
 - (j) an address from which copies of the application form and accompanying documents may be requested from the applicant.
- (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); and

- (iv) the places 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 of application 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 with the expiry of the period for making representations.

(3) Any person may request a copy of the application and any of the 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 deadline for persons to make 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 application 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 the person's interest (if any) in the release land or any replacement land;
- (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 allowed 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 the 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 release land and any replacement land are situated;
- (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 application.

(2) The notice of hearing or inquiry must include—

- (a) the name of the applicant;
- (b) the location of the release land;
- (c) a statement as to whether it is proposed that any land be registered as replacement land and, if so, the location of the replacement land;
- (d) a statement indicating that a hearing or inquiry (as the case may be) will be held in connection with the proposal;
- (e) the date, time and place of the hearing or inquiry and the name of the inspector; and
- (f) 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 another date;
 - (b) adjourn a hearing or inquiry to the site of the release land or any replacement land, 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 paragraphs (3) to (5) of regulation 12—
- (a) the applicant is entitled to give, or to call another person to give, oral evidence;
 - (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 to 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 prevent 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 inspector is appointed to carry out a hearing or inquiry, the inspector must inspect the release land and any replacement land before determining the application or producing a report.

(2) In any other case, before determining an application the determining authority may—

- (a) inspect the release land and any replacement land; or
- (b) where the Welsh Ministers are the determining authority, appoint an inspector to inspect the release land and any replacement land and to produce a report.

(3) Before making a site inspection under paragraph (1) or (2), the inspector or determining authority 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 or determining authority 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 or determining authority 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) the findings made at a site inspection, if any, 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 the application, and notify the applicant in writing of that decision and the reasons for it.
- (2) Where an inspector has produced a report following a hearing, inquiry or site inspection, the notification of the decision must be accompanied by a copy of that report.
- (3) If the determining authority grants the application, it must also—
- (a) send its order under section 17 of the 2006 Act to the commons registration authority for the area in which the release land and the replacement land (if any) are situated; and
 - (b) send a copy of the order to the applicant.

Publication of decision and order

- 19.** The determining authority must publish on an appropriate website—
- (a) its decision and the reasons for it; and
 - (b) if it grants the application, a copy of its order under section 17 of the 2006 Act.

7 March 2012

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

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 16 of the Commons Act 2006 for the deregistration, or the deregistration and exchange, of land registered as common land or as a town or village green.

They 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 and 8);
- (b) making representations in relation to applications (regulation 10); and
- (c) the management and determination of applications, including provision for holding site inspections, hearings or inquiries in appropriate cases (regulations 6, 9 and 11-19).

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.