

EXPLANATORY MEMORANDUM TO
THE HYDROCARBONS LICENSING DIRECTIVE REGULATIONS
(NORTHERN IRELAND) 2010

S.R. 2010 No. 170

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The primary objective of the Statutory Rule is to implement the Hydrocarbons Licensing Directive (94/22/EC) ("the Directive") in Northern Ireland by introducing new arrangements and requirements for granting and using authorisations (licences) relating to the prospection, exploration and production of hydrocarbons. The Directive requires non-discriminatory access to the licensing arrangements, thereby reinforcing integration of the internal energy market and encouraging greater competition within it. In order to ensure that implementation is comprehensive and effective, the Statutory Rule deals with new petroleum licensing arrangements, the extent of those arrangements and the position of existing licences.
- 2.2. The Statutory Rule implements those provisions of the Directive dealing with the manner in which licence applications are considered and determined (Regulations 3, 4 and 5), the terms and conditions which are to be applied when a licence is granted (Regulations 6 and 7), the extent of an area granted by, and duration of, a licence (Regulations 8 and 9) and the information which the Department may require from a licensee (Regulation 10). The relationship between the individual regulations and the provisions of the Directive is set out in detail in the attached Transposition Note.
- 2.3. There is a gap in the current statutory licensing arrangements in the United Kingdom. This gap arises because the Petroleum (Production) Act (Northern Ireland) 1964 ("the 1964 Act") did not vest petroleum rights in strata beneath the internal waters of Northern Ireland in the then Ministry of Commerce and the licensing functions of the Secretary of State under Part I of the Petroleum Act 1998 do not extend to such waters, that is, in areas such as Belfast or Larne Loughs. These rights are believed to vest in the Crown at common law. The Department has therefore no power to grant a petroleum licence in respect of any of these areas.
- 2.4. If this uncertainty is not removed, there remains a doubt that the Directive is fully implemented in Northern Ireland. Regulation 11 amends the 1964 Act to remove the uncertainty by vesting property in petroleum rights in

strata beneath these waters in the Department, thereby enabling the Department to grant petroleum licences in the internal waters adjacent to Northern Ireland.

- 2.5. Article 11 of the Directive states that the Directive applies to authorisations (licences) granted from 1st July 1995. All licences from that date should have been granted in accordance with the provisions of the Directive, following a notice in the Official Journal of the European Union. No such notice was published by the Department.
- 2.6. Regulation 12 revokes any licence which was not granted in accordance with the provisions of the Directive and which is still in force when the Regulations come into operation. It also revokes any right under a licence so granted and declares any such licence or right to be without legal effect.
- 2.7. Regulation 13 applies where an entity and a former licensee make an application for a licence in respect of the whole or any part of an area granted by a former licence on the same day. The Regulation requires the Department to determine the applications in accordance with the criteria set out in regulation 4 (determination of applications). Where the applications are of equal merit, the Regulation provides for the Department to consult with all the applicants and, with their agreement, adjust the areas in respect of which applications are made so that there is no overlap and grant licences accordingly.
- 2.8. Where agreement cannot be reached, Regulation 14 provides for the disclosure of information acquired by a former licensee and makes provision for a competing applicant to revise its application in the light of that information. The competing applicant must agree in writing to treat the information confidentially and pay compensation to the former licensee if it (the competing applicant) is granted a licence.

3. Background

- 3.1. Provisions governing petroleum licensing arrangements in Northern Ireland are contained in the 1964 Act. This Act provides that the Department may make regulations prescribing the manner in which and persons by whom licence applications may be made, the conditions as to the extent and shape of areas in respect of which licences may be granted and model clauses which may be incorporated into each licence.
- 3.2. Petroleum licence applications in Northern Ireland are considered and granted by the Department in accordance with the 1964 Act and regulations made under it. The form of application for a licence and the model clauses which may be incorporated in a licence are contained at present in the Petroleum Production Regulations (Northern Ireland) 1987 (“the 1987 Regulations”). In addition to this Statutory Rule, the 1987 Regulations are now being amended by another set of Regulations (the Petroleum Production (Amendment) Regulations (Northern Ireland) 2010) which will come into operation at the same time. These amending Regulations make other changes to update the petroleum licensing regime in Northern Ireland and align it more closely with arrangements in Great Britain.

- 3.3. The Directive came into force on 30 June 1994 and applies to licences granted from 1st July 1995, setting out new arrangements and conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons. Implementation of the Directive in Northern Ireland requires new regulatory provisions relating to applications for licences.
- 3.4. The Statutory Rule implements, as respects Northern Ireland, the new regulatory provisions of the Directive which contain common rules and procedures to encourage greater access to licensing arrangements across member states.

4. Consultation

- 4.1. The provisions of the Statutory Rule give effect to a Council Directive. These provisions require the Department to take certain steps when it invites, determines or refuses licence applications and set out common criteria which must be applied to all applicants without discrimination. The provisions align with those which apply in Great Britain and other member states. Prospective applicants are notified of the new arrangements by means of a notice published in the Official Journal of the European Union.
- 4.2. The Department has consulted on proposals to implement the Directive in Northern Ireland and sought views on bringing the new licensing arrangements into line with those in Great Britain. No substantive comments were received.

5. Equality Impact

- 5.1. In accordance with its obligations under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the provisions of the Statutory Rule and has concluded that an equality impact assessment is not necessary.
- 5.2. The Statutory Rule sets out the framework for a new licensing regime and also the provisions with which applicants for licences must comply. The emphasis in the new provisions is that the Department must provide equal opportunity for applications to be made and apply all provisions equally and without discrimination to all applicants.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment has not been prepared for the Statutory Rule because it has no general impact on business, charities or voluntary bodies. A very small number of licence applications is received by the Department. New licence applications must now conform to the provisions of the Statutory Rule which give effect to the Directive.
- 6.2. The Statutory Rule impacts on a small number of licensees whose licences were granted during the period when the Directive had not been implemented by revoking those licences (if still in force when the Regulations come into operation) and any rights under them.

7. Financial Implications

- 7.1. The Statutory Rule has some financial implications estimated to be in the region of £200,000. The impact on administrative arrangements for processing licence applications is negligible as these are already in place in the Department.
- 7.2. There are costs associated with preparing guidance as to how licence applications should be made and will be determined. The Department also intends to conduct a Strategic Environmental Assessment before it invites applications for petroleum licences relating to the internal waters adjacent to Northern Ireland.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department requires this Statutory Rule to be made as soon as possible to ensure that licensing arrangements under the 1964 Act comply fully with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The Statutory Rule implements the requirements of the Hydrocarbons Licensing Directive 94/22/EC. The relationship between the individual regulations and the provisions of the Directive is set out in detail in the attached Transposition Note.
- 9.2. The Department is designated in respect of measures relating to the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons by Statutory Instrument 1998/2793, giving it power to make this Statutory Rule.

10. Parity or Replicatory Measure

- 10.1. The Statutory Rule applies to Northern Ireland including the internal waters adjacent to Northern Ireland. Great Britain implemented the Hydrocarbons Licensing Directive on 1st July 1995 and the Department of Energy and Climate Change is the licensing authority for Great Britain and the territorial seas around the United Kingdom, including Northern Ireland.
- 10.2. Licensing arrangements in Great Britain, including model clauses to be included in licences, differ from those in Northern Ireland.

11. Additional Information

- 11.1. Not applicable.

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TRANSPOSITION NOTE

(References to regulations in the third column of this Transposition Note relate to regulations in the Hydrocarbons Licensing Directive Regulations)

The Hydrocarbons Licensing Directive (European Parliament and Council Directive 94/22/EC) sets out arrangements and conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons. The emphasis in the Directive is on creating non-discriminatory access to hydrocarbon resources within member states with the objective of encouraging competition and developing the internal energy market.

The Directive confirms the right of member states to determine which areas within their territory are to be made available for the activities covered by the Directive but requires them to ensure that there is no discrimination between applicants for licences. Access may, however, be constrained by various considerations including protection of the environment, public health or safety and other matters specified in the Directive. An authorisation may also be refused on the grounds of national security. In considering applications, member states are to take into account the technical and financial experience of the applicant and the methods intended to be used to prospect for, explore or produce hydrocarbon resources.

Access is encouraged by a requirement on member states to publish a notice in the Official Journal of the European Union describing the areas available for applications.

Transposition Note for Directive 94/22/EC of the European Parliament and of the Council (the “Hydrocarbons Licensing Directive”)

Articles	Objectives	Implementation	Responsibility
1	<p>Contains definitions relevant to the provisions of the Directive and to authorisations issued by the competent authority in a member state to prospect or explore for or produce hydrocarbons.</p>	<p>The main purpose of the Directive is to ensure non-discriminatory access within the Community to prospecting, exploration and production activity.</p> <p>The Directive establishes a set of common rules and provisions to this end. The Regulations required to implement the Directive in Northern Ireland use the expression ‘licence’ rather than ‘authorisation’. Where appropriate, this transposition note records that no action is necessary.</p> <p>Regulation 2 contains relevant definitions.</p>	<p>The Department of Energy and Climate Change (DECC) is the lead Department in the United Kingdom. The Department of Enterprise, Trade and Investment (DETI) is the ‘competent authority’ for the purposes of the Directive in its application to Northern Ireland.</p>
2	<p>Article 2.1 gives member states the right to determine specific areas for activities under the Directive. Article 2.2 requires member states to ensure that there is no discrimination regarding access to these areas for the exercise of those activities. Article 2.2 also allows refusal of access on the grounds of national security.</p>	<p>No action is necessary in regard to Article 2.1. Regulation 4(3) and (4) implements Article 2.2.</p> <p>Regulation 4 sets out the criteria on which every application for a licence is to be judged and provides that these must be applied in a non discriminatory manner. An application may be refused on the grounds of national security where the applicant is controlled by a State, or nationals of a State, which is not an EEA State.</p>	<p>DETI</p>
3	<p>Requires member states to grant authorisations only after a procedure which allows all interested entities to submit applications. This procedure includes publication of a notice in the Official Journal describing the areas available. Member states may refuse to grant authorisations.</p>	<p>Regulation 3 describes the procedure which enables all interested parties to submit applications for a licence. The procedure requires publication of a notice in the Official Journal. An additional notice is required if there is a change in the information published. (Article 3.2 contains an alternative notice procedure which is not being implemented in Northern Ireland).</p> <p>Regulation 4(1) implements Article 3.6 which allows member states to refuse to grant a licence.</p>	<p>DETI</p>

4	<p>Article 4(a) requires member states to determine the extent of areas for licensed activities in a manner which ensures the best possible exercise of those activities. Article 4(b) and (c) contains provisions regarding the optimum duration of an authorisation.</p>	<p>Regulation 8 implements Article 4(a).</p> <p>Regulation 9 implements Article 4(b) and (c). It sets out arrangements for the duration of a licence and the conditions which apply for an extension of its term.</p>	DETI
5	<p>Article 5.1 sets out both mandatory and permissive criteria to be applied in granting an authorisation and requires that these criteria are published in a notice in the Official Journal.</p> <p>Articles 5.2 and 5.3 require that the conditions and requirements relating to an authorisation (and any changes to them) be made available to interested entities.</p> <p>Article 5.4 requires that the criteria, conditions and requirements be applied in a non-discriminatory manner.</p> <p>Article 5.5 requires that an unsuccessful applicant be informed (if it wishes) of the reasons for the decision.</p>	<p>Article 5.1 is implemented by Regulation 4(1) and (2) which specifies the criteria to be used in determining an application and by Regulation 5 which requires the criteria to be set out in the same notice as is published in the Official Journal in accordance with Regulation 3.</p> <p>Regulation 7 implements Article 5.2 and 5.3 by requiring that the terms and conditions of a licence or any changes to them be made available to all interested parties.</p> <p>Article 5.4 is implemented by Regulation 4(3) in relation to the criteria to be used in the determination of an application and by Regulation 6(3) in relation to the terms and conditions of a licence.</p> <p>Regulation 4(5) requires reasons for the refusal of a licence to be notified to an applicant on request.</p>	DETI

6	Specifies conditions and requirements which may be imposed on the exercise of activities for the prospection, exploration or production of hydrocarbons. Article 6 also limits the information which may be requested from, and the monitoring of, entities to the extent necessary to ensure compliance with these conditions and requirements.	Regulation 6 limits the terms and conditions under which a licence may be granted and sets out the considerations which may apply. (As noted above, it also provides that the terms and conditions be applied in a non-discriminatory manner as required by Article 5.4 of the Directive.) The considerations include national security, public safety, public health, security of transport, protection of the environment, protection of certain resources, safety of installations and workers and the need to secure tax revenues. Regulation 10 implements the information and monitoring provisions of Article 6.	DETI
7	Abolishes with effect from 1 January 1997 any provision which purports to reserve the right to obtain an authorisation in a specific area to a single entity.	No action required.	DETI
8	Requires member states to inform the Commission of any difficulty encountered by entities in securing access to Directive activities in third countries.	Any such difficulty brought to DETI's attention will be notified to DECC.	DECC
9	Requires each member state to publish and communicate to the Commission an annual report to include information about areas opened for activities under the Directive.	DETI will supplement DECC's report to the Commission with information on petroleum licensing in Northern Ireland.	DECC

10	Requires details of competent authorities to be notified to the Commission by 1 May 1995.	Commission notified in 1995. The name of the Department, formerly the Department of Economic Development, has changed. The Commission has been notified of the name change and a notice with the Department's new name will be published in the Official Journal.	DECC
11	Applies the provisions of the Directive to authorisations granted from the date laid down in Article 14.	No action required. The relevant date is 1 July 1995. Authorisations granted since 1 July 1995 and still in force are revoked by Regulation 12.	DETI
12	Amends Council Directive 90/531/EEC which relates to oil or gas exploitation.	No action required. Directive 90/531/EEC has now been replaced by European Parliament and Council Directive 2004/17/EC.	Not applicable
13	Makes specific provision relating to Denmark.	No action required.	Not applicable
14	Requires member states to implement the Directive by 1 July 1995. Implementing measures must contain or be accompanied by a reference to the Directive.	The Directive was not implemented in Northern Ireland in July 1995. The Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010 are required to give effect to the requirements of the Directive in Northern Ireland and a reference to the Directive is contained in the Explanatory Note to the Regulations.	DECC and DETI
15	Provides for the Directive to take effect from the date of publication in the Official Journal, namely, 30 June 1994.	As above.	Not applicable
16	Addresses the Directive to member states.	As above.	Not applicable