STATUTORY RULES OF NORTHERN IRELAND

2010 No. 170

PETROLEUM

The Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010

Made - - - -	*30th April 2010*
Coming into operation	*28th May 2010*

The Department of Enterprise, Trade and Investment(**1**) is a Department designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972(**3**) in relation to measures relating to the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons.

The Department makes the following Regulations in exercise of the powers conferred by that section.

Commencement, citation and application

1.—(1) These Regulations may be cited as the Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010 and shall come into operation on 28th May 2010.

(2) These Regulations do not apply in relation to any area within the territorial sea adjacent to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

"the 1964 Act" means the Petroleum (Production) Act (Northern Ireland) 1964(**4**);

"the 1987 Regulations" means the Petroleum Production Regulations (Northern Ireland) 1987(**5**);

"applicant" means an entity which has made an application for a licence;

"application for a licence" means an application made under the 1987 Regulations;

"the Department" means the Department of Enterprise, Trade and Investment;

(**1**) Formerly the Department of Economic Development; see Article 3(5) of the Departments (Northern Ireland) Order 1999 S.I. 1999/283 (N.I. 1)
(**2**) S.I. 1998/2793
(**3**) 1972 c.68
(**4**) 1964 c.28 (N.I.)
(**5**) S.R. 1987 No. 196, as amended by S.R. 2010 No. 169

"EEA State" means

(a) a state which is a member of the European Union; and

(b) Norway, Iceland or Liechtenstein;

"entity" means any person or any group of persons;

"former licence" means a licence granted under section 2(1) of the 1964 Act on or after the 1st July 1995, but before the date these Regulations come into operation, and "former licensee" and "former licensed area" shall be construed accordingly;

"licence" means a licence granted following an application for a licence;

"notice" means notice in writing;

"the Official Journal" means the Official Journal of the European Union;

"the Treaty on the Functioning of the European Union" means the Treaty establishing (what was then called) the European Economic Community, signed at Rome on 25th March 1957, as last amended and renamed by the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13th December 2007(**6**).

(2) For the purposes of these Regulations and the 1987 Regulations an application for a licence is made on the day on which it is received by the Department.

(3) The Interpretation Act (Northern Ireland) 1954(**7**) applies to these Regulations as it applies to an Act of the Assembly.

Applications for licences

3.—(1) Subject to paragraph (6), every application for a licence shall relate to an area described in a notice published in the Official Journal.

(2) The notice referred to in paragraph (1) shall—

(a) describe the areas in respect of which applications may be made at any time; and

(b) specify the place where detailed information in respect of those areas may be obtained.

(3) The detailed information referred to in paragraph (2)(b) shall include a report prepared by the Department on the hydrocarbon prospectivity of the areas described in the notice.

(4) If there is any significant change in the information published in the notice under paragraph (1), the Department shall publish an additional notice in the Official Journal.

(5) The Department shall not consider any application for a licence until after a period of 60 days from the date of publication of the notice under paragraph (1) or, as the case may be, any additional notice under paragraph (4), and any application for a licence made to the Department within such period shall be treated as if it were made on the 60th day after the date of publication of the relevant notice in the Official Journal.

(6) Where the Department decides that geological or production considerations justify the granting of a licence in respect of any area to the holder of a licence in respect of a contiguous area, and notifies that holder and any other holders of licences in respect of areas contiguous to the area in question accordingly, any of them may apply for a licence in respect of the area in question within such period as the Department considers sufficient for this purpose and specifies in the notification.

(**6**) A consolidated version of the Treaty on the Functioning of the European Union can be found in O.J. No. C115, 9.5.2008
(**7**) 1954 c.33 (N.I.)

Determination of applications

4.—(1) Subject to paragraphs (3) to (5), every application for a licence shall be determined on the basis of criteria concerning—

(a) the technical and financial capability of the applicant;

(b) the way in which the applicant proposes to carry out the activities that would be authorised by the licence;

(c) in a case where tenders are invited, the price the applicant is prepared to pay in order to obtain the licence; and

(d) where the applicant holds, or has held a licence under the 1964 Act, any lack of efficiency and responsibility displayed by the applicant in operations under that licence,

and the Department may refuse an application for a licence.

(2) Applications for licences shall be considered and determined in the order in which they are made, unless two or more applications are made on the same day, or are treated as having been made on the same day pursuant to regulation 3(5), in which case the merits of the applications shall be compared according to the criteria provided for in paragraph (1) and, if applicable, paragraph (3) to the extent that they relate to the same area.

(3) In a case where two or more applications for a licence have equal merit when assessed according to the criteria provided for in paragraph (1), other relevant objective criteria may be applied in order to determine which application should be granted.

(4) Subject to paragraph (5), the Department shall not apply any of the criteria in paragraphs (1) and (3) in a discriminatory manner.

(5) An application for a licence may be refused on grounds of national security where the applicant is effectively controlled by, or by nationals of, a State other than an EEA State.

(6) Where an application for a licence is refused, the reasons for the decision shall be notified in writing to the applicant on request.

Advance notice of criteria

5. Any notice which, in accordance with regulation 3—

(a) describes the area in respect of which applications for licences may be made; and

(b) is published in the Official Journal,

shall set out the criteria to be applied in determining those applications.

Scope and application of terms and conditions

6.—(1) No licence shall be granted upon terms and conditions other than such terms and conditions as are justified exclusively for the purpose of—

(a) ensuring the proper performance of the activities authorised by the licence;

(b) providing for the payment of consideration for the grant of the licence;

(c) any of the considerations specified in paragraph (2).

(2) The considerations referred to in paragraph (1)(c) are—

(a) national security;

(b) public safety;

(c) public health;

(d) security of transport;

(e) protection of the environment;

(f) protection of biological resources and of national treasures possessing artistic, historic or archaeological value;

(g) safety of installations and of workers;

(h) planned management of hydrocarbon resources, including in particular the rate at which hydrocarbons are depleted and the optimisation of their recovery;

(i) the need to secure tax revenues.

(3) The terms and conditions provided for in paragraphs (1) and (2) shall be applied in a non-discriminatory manner.

Availability of terms and conditions

7.—(1) In any case where applications for licences may be made in accordance with regulation 3 and the 1987 Regulations and the Department intends that a licence should be granted upon terms or conditions which differ from or are additional to those prescribed in the 1987 Regulations for incorporation in licences, a statement of such terms and conditions shall be made available to any interested entity at any time on request.

(2) If any change to the terms and conditions included in the statement provided for in paragraph (1) is decided upon after the statement is first made available and before the licence to which it relates is granted, the change shall be notified in writing as soon as practicable to every entity which has requested the statement.

Extent of area granted by licence

8. The Department shall ensure that the extent of each area granted by a licence is determined in such a way that it does not exceed the area justified by the best possible exercise of the activities authorised by the licence from the technical and economic points of view.

Duration of the licence

9.—(1) Subject to paragraph (2), the Department shall ensure that—

(a) a licence only grants an entity exclusive rights for the period which is necessary for the proper performance of the activities authorised by the licence; and

(b) the duration of the licence does not exceed the period necessary to carry out the activities authorised by the licence.

(2) The Department may extend the term of a licence if—

(a) the terms and conditions of the licence permit an extension of the term;

(b) the licensee has performed its obligations in accordance with the terms and conditions of the licence; and

(c) the term of the licence has proved, or is likely to prove, insufficient for the licensee to complete the activities authorised by the licence.

Information

10.—(1) The Department may only require an entity which has been granted a licence to provide information on its intended or actual sources of procurement of supplies, works or services if that request is made exclusively with a view to the objectives set out in Article 36 of the Treaty on the Functioning of the European Union(**8**).

(**8**) Formerly Article 30 of the E.C. Treaty

(2) The Department may only request information from an entity which has been granted a licence to monitor the activities of that entity if that monitoring is justified by any of the matters referred to in regulation 6(1) and (2).

Amendment of the 1964 Act

11. In section 1 of the 1964 Act for subsection (4) substitute—

"(4) In subsection (1) "strata in Northern Ireland" includes strata beneath the internal waters adjacent to Northern Ireland, but does not include strata beneath the territorial sea of the United Kingdom adjacent to Northern Ireland.".

Revocation of former licences

12.—(1) Any former licence which is in force immediately before the coming into operation of these Regulations and any right under any former licence, including any right to renewal (whether or not such right is exercisable or has been exercised before the coming into operation of these Regulations), are revoked.

(2) In paragraph (1)—

"in force" means that the term for which a former licence had been granted has not yet expired;

"right" means any right claimed by any person to be derived from a former licence;

"revoked" means declared to be without legal effect pursuant to section 2(1) of the European Communities Act 1972 and deprived of any legal effect which any licence or right referred to in that paragraph might have notwithstanding the effects of the aforesaid section 2(1).

Applications in relation to former licensed areas

13.—(1) This regulation applies where—

(a) an entity and a former licensee each makes an application for a licence in respect of the same area;

(b) that area, either wholly or in part, overlaps with the area originally granted by the former licence; and

(c) it is necessary to compare the merits of the applications in accordance with regulation 4(2).

(2) For the purposes of paragraph (1) an application for a licence made by an entity which is controlled by, or is otherwise connected with, a former licensee in respect of the area, or any part of the area, to which the application made by any other entity relates, shall be treated as if it were made by the former licensee.

(3) For the purposes of determining two or more applications for a licence in accordance with regulation 4—

(a) any application for a licence shall be excluded from further consideration if it is assessed according to the criteria provided for in regulation 4(1)(a) and (b) as having less merit than any other application, other than an application made by a former licensee where that former licensee's ability to satisfy those criteria is affected by an advantage enjoyed by that licensee;

(b) any application for a licence made by a former licensee shall not be assessed as having greater merit than an application for a licence made by any other entity when assessed according to the criteria provided for in regulation 4(1)(a) and (b) where that former licensee's ability to satisfy those criteria is affected by an advantage enjoyed by that licensee.