

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(**a**) is a Department designated(**b**) for the purposes of section 2(2) of the European Communities Act 1972(**c**) 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(**d**);

“the 1987 Regulations” means the Petroleum Production Regulations (Northern Ireland) 1987(**e**);

“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;

“EEA State” means

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

(b) Norway, Iceland or Liechtenstein;

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

“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(a).

(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(b) 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.

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;

(a) A consolidated version of the Treaty on the Functioning of the European Union can be found in O.J. No. C115, 9.5.2008

(b) 1954 c.33 (N.I.)

- (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^(a).

(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.”.

(a) Formerly Article 30 of the E.C. Treaty

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.

(4) Where two or more applications for a licence have equal merit when assessed according to the criteria provided for in regulation 4(1) and, if applicable, (3), the Department shall consult with all of the applicants and shall, with the agreement of all of the applicants, adjust the area in respect of which a licence is applied for by each applicant so that each applicant is granted a licence for an area which does not overlap with the area granted by any other licence.

(5) But, in default of such agreement, the Department shall proceed in accordance with regulation 14 and without regard to paragraph (3).

(6) In paragraph (3) any reference to an advantage enjoyed by a former licensee is a reference to any information acquired by the former licensee in the course of any activities carried on by it under the former licence and not previously disclosed to all of the other applicants.

(7) In paragraph (6) “information” means any information in whatever form of a geological, scientific or technical kind.

14.—(1) Notwithstanding anything in the terms and conditions of the former licence, the Department shall disclose to each applicant (other than the former licensee) all information (whether of a general or specific nature) relating to the activities carried on by the former licensee in the former licensed area for the purpose only of enabling the applicant to revise its application for a licence or any report, work programme or other document required under the 1987 Regulations in connection with such application.

(2) The disclosure of information by the Department under paragraph (1) shall be subject to the following conditions—

- (a) subject to sub-paragraph (b)(ii), the applicant shall treat as confidential all information disclosed to it;
- (b) if it is granted a licence in respect of the whole or any part of the area applied for the applicant shall—
 - (i) within 21 days from the date of the grant of the licence pay to the former licensee such compensation for the disclosure of the information as may be agreed between the applicant and the former licensee or, in default of agreement, as may be determined by an independent person appointed for the purpose by the Department; and
 - (ii) be entitled to retain and make use of the information disclosed;
- (c) the applicant shall have agreed in writing to be bound by the conditions referred to in sub-paragraphs (a) and (b).

(3) If an applicant agrees in writing to be bound by the conditions referred to in paragraph (2), the Department shall—

- (a) disclose the information referred to in paragraph (1) to the applicant within 14 days from the date of its receipt of such written agreement;
- (b) subject to such terms and conditions as the Department may determine, appoint an independent person (“the assessor”) to determine the amount of compensation to be paid to the former licensee;
- (c) serve notice on the former licensee inviting it within 14 days from the date of the notice to—
 - (i) furnish to the Department for the attention of the assessor detailed written evidence of the costs incurred by it in acquiring the information disclosed; and
 - (ii) make to the Department for the attention of the assessor such written observations as it considers relevant to determining the amount of compensation which should be paid;
- (d) disclose the evidence and observations furnished to it by the former licensee under sub-paragraph (c) to the applicant, and serve notice on the applicant inviting it within 14 days from the date of the notice to make to the Department for the attention of the assessor such written observations as it considers relevant to determining the amount of compensation which should be paid;
- (e) disclose the observations made to it by the applicant under sub-paragraph (d) to the former licensee and serve notice on the former licensee inviting it within 7 days from the date of the notice to make to the Department for the attention of the assessor any further observations;
- (f) disclose any further observations made to it by the former licensee under sub-paragraph (e) to the applicant and serve notice on the applicant inviting it within 7 days from the date of the notice to make to the Department for the attention of the assessor any final observations.

(4) But if an applicant does not agree in writing to be bound by the conditions referred to in paragraph (2), the Department shall proceed to determine the application of that applicant in accordance with regulation 4 and without regard to regulation 13(3).

- (5) The assessor—
- (a) shall determine the amount of compensation to be paid to the former licensee for the disclosure of the information;
 - (b) shall report such determination and the reasoning on which it is based in writing to the Department;
 - (c) subject to paragraph (3), may regulate the procedure to be followed.

(6) In assessing compensation under this regulation, the assessor shall have regard to the costs reasonably incurred by the former licensee in acquiring the information disclosed by the Department to the applicant and to the value of that information to the applicant if it is granted a licence in respect of the whole or any part of the area applied for, and shall determine an amount of compensation which is fair.

(7) The Department shall provide the former licensee and the applicant with a copy of the assessor's determination.

(8) The applicant may make such revisions to its application for a licence or to any report, work programme or other document previously submitted to the Department in connection with such application as it thinks fit within a period of 60 days from the date on which it agreed with the former licensee the amount of compensation to be paid or, in default of such agreement, within a period of 60 days from the date on which the determination of the assessor is provided by the Department to the applicant under paragraph (7), but so that in either case the period for revising the application does not exceed a period of 90 days from the date of disclosure of the information.

(9) Any breach of the condition referred to in paragraph (2)(a) or (b)(i) shall be actionable by the former licensee which furnished to the Department the information disclosed as if the agreement in writing of the applicant pursuant to paragraph (2)(c) were a legally enforceable contract made between the applicant and the former licensee.

(10) The Late Payment of Commercial Debts (Interest) Act 1998(a) shall apply for the purposes of this regulation as if the amount of compensation for the disclosure of information to be paid by the applicant were a "qualifying debt" within the meaning of section 3 of that Act, and for the purposes of section 4 of that Act, the "relevant day" after which interest starts to run were the 21st day after the date the licence is granted.

(11) In this regulation "information" means records, returns, plans, maps, samples or other information of a geological, scientific or technical kind furnished to the Department under the provisions of a former licence, but excludes any such information which would not be treated as confidential under the provisions of the former licence.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 30th April 2010.



Noel Cornick

A senior officer of the
Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, as respects Northern Ireland (except in the territorial sea), Articles 2.2, 3 (other than Article 3.2), 4, 5 and 6 of Council Directive (94/22/EC) on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (“the Directive”) (O.J. L164, 30.6.94, p.3) and are supplemental to the Petroleum Production Regulations (Northern Ireland) 1987 (S.R. 1987 No. 196) (“the 1987 Regulations”). The Regulations come into operation on 28th May 2010.

Regulation 3 implements Article 3 of the Directive by introducing a new procedure for applications for licences. It requires a description of the areas available to be licensed to be published in a notice in the Official Journal of the European Union and requires every application to relate to an area described in such a notice. The Department is required to specify where detailed information, including reports on the hydrocarbon prospectivity of these areas prepared by the Department, may be obtained. Regulation 3(4) requires an additional notice to be published in the Official Journal if there are any changes to the information in the original notice. Regulation 3(5) ensures equality of access as required by the Directive by providing that no application may be considered until after a period of 60 days from the date of publication of the notice in the Official Journal. Regulation 3(6) introduces a procedure whereby a licensee may apply for a licence for an area contiguous to the area granted by its existing licence if the Department decides that geological or production considerations justify the grant of such a licence.

Regulation 4 partially implements Article 5 of the Directive by restricting the criteria which the Department may take into account when considering an application for a licence made in accordance with the 1987 Regulations and by allowing for the refusal of an application. It also provides that an application may be refused on the grounds of national security if the applicant is effectively controlled by a State or nationals of a State which is not an EEA State, but otherwise the criteria may not be applied in a discriminatory manner. When an application is refused, the applicant is to be notified on request of the reasons for the decision. Regulation 4(2) provides that applications will be considered and determined in the order in which they are received unless two or more applications are received on the same day, or are treated as having been received on the same day pursuant to regulation 3(5), in which case the applications must be compared to the extent that they relate to the same area in accordance with the criteria in regulation 4(1) and, if applicable, (3).

Regulation 5 also partially implements Article 5 of the Directive by providing that the criteria upon which applications are to be determined must be set out in the notice describing the areas in respect of which applications may be made published in the Official Journal.

Regulation 6 partially implements Article 6 of the Directive. It limits the terms and conditions which may be imposed on the grant of a licence and provides that such terms and conditions shall be applied in a non-discriminatory manner. Regulation 10 also partially implements Article 6 by limiting the Department’s powers to request information from a licensee and to monitor the activities of the licensee.

Regulation 7 partially implements Article 5 of the Directive. It provides that where applications for a licence may be made, the Department shall make available to interested entities the terms and conditions upon which the licence will be granted if those terms and conditions differ from or are additional to those prescribed in the 1987 Regulations. If a change is made in those terms and conditions prior to the grant of the licence, the Department is to issue details of that change to any entity which has requested a statement of terms and conditions.

Regulation 8 implements Article 4(a) of the Directive by requiring the Department to ensure that the area granted by a licence does not exceed that justified by the best possible exercise of the activities authorised by the licence.

Regulation 9 implements Article 4(b) and (c) of the Directive. It requires the Department to limit the term of any licence granted to the period necessary for the proper performance of the activities authorised by the licence and restricts the circumstances in which the Department may extend a licence.

Regulation 11 amends section 1 of the Petroleum (Production) Act (Northern Ireland) 1964 to vest in the Department the property in petroleum in strata beneath the internal waters adjacent to Northern Ireland.

Regulation 12 revokes any former licence which was in force immediately before the Regulations come into operation and also revokes any right under any former licence, including any right to renewal.

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 the former licence on the same day. Regulation 13(3) provides that an application made by a former licensee shall not be assessed as having greater merit than an application made by any other entity when assessed according to the criteria set out in regulation 4(1) and, if applicable (3), where the former licensee's ability to satisfy those criteria is affected by an advantage enjoyed by it arising out of information acquired by it in the course of any activities carried on under its former licence and that information has not been previously disclosed to other applicants. Where applications are assessed as having equal merit, regulation 13(4) provides that the Department shall 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.

Regulation 14 applies where an applicant and former licensee have not agreed to adjust the areas in respect of which applications are made so that there is no overlap. Regulation 14(1) requires the Department to disclose to the applicant information furnished to the Department by the former licensee under the provisions of the former licence and which would normally have been treated as confidential by the Department. The disclosure of information to the applicant is subject to specified conditions, including a requirement to compensate the former licensee for the information disclosed if that applicant is granted a licence for the whole or any part of the area applied for. The amount of compensation is to be determined by an independent person ("the assessor") appointed by the Department if agreement on the amount to be paid cannot be reached between the applicant and former licensee. A copy of the assessor's determination is to be provided to the applicant and former licensee. The applicant is allowed a period of 60 days to revise its application provided this period does not extend beyond a period of 90 days from the date on which information is disclosed. Any breach of the condition to pay compensation is actionable by the former licensee and interest will start to run if payment is not made within 21 days of the date the licence is granted. A former licence is defined in regulation 2(1) as a licence granted by the Department in the period 1st July 1995 to the date on which these Regulations come into operation.

A Regulatory Impact Assessment has not been prepared as the new procedure for applications for licences has no additional impact on business, charities or voluntary bodies.

A copy of the Transposition Note in relation to the implementation of the Directive in Northern Ireland can be obtained from the Department of Enterprise, Trade and Investment, Minerals and Petroleum Branch, Colby House, Stranmillis Court, Belfast BT9 5BF.

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