
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 prospecting, 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.

Status: This is the original version (as it was originally made).

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.