



Consultation

Implementation of The Hydrocarbons Licensing Directive in Northern Ireland

August 2009

Contents

1

How to give your views

2

Introduction

3

The Hydrocarbons Licensing Directive

4

Current Position – the 1987 Regulations

5

Proposed new arrangements

Annex A

Freedom of Information Act 2000 – Confidentiality of consultations

Annex B

Summary of requirements of Council Directive 94/22/EC (“the Hydrocarbons Licensing Directive”)

Annex C

Equality, Regulatory and other impact assessments

HOW TO GIVE YOUR VIEWS

1

- 1.1 If this document is not in a format that meets your needs please contact Minerals Branch in DETI at the address below. This document can be made available in an accessible format if required, i.e. Braille, large print, audio cassette or in a minority ethnic language.
- 1.2 The document is also available on <http://www.detini.gov.uk>
- 1.3 You can send us your views on this consultation paper and on any other relevant issues which may not have been covered to the address below. Consultees should be aware that there is limited opportunity for the Department to reshape the proposed direction of the two pieces of subordinate legislation required to implement the Directive, since the Department is constrained by the very specific terms and requirements of the Directive.
- 1.4 The consultation period will close on 30th September 2009.
- 1.5 Before responding to this consultation, please read the confidentiality statement at **Annex A**.

Email : minerals@detini.gov.uk

Telephone : 028 9038 8462

Fax : 028 9038 8461

Textphone : 028 9052 9304

Address: Minerals Branch
Colby House
Stranmillis Court
Belfast
BT9 5BF

INTRODUCTION

2

- 2.1 [Council Directive 94/22/EC \(“the Directive”\)](#) came into effect on 1st July 1995, setting out new arrangements and conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (petroleum, oil and gas). For the purposes of this consultation, these arrangements and conditions are considered in the context of searching and boring for or producing petroleum under the Petroleum (Production) Act (Northern Ireland) 1964.
- 2.2 The emphasis in the Directive is on creating non-discriminatory and transparent access to hydrocarbon resources within member states with the objective of encouraging competition and developing the internal energy market.
- 2.3 The Directive was implemented in Great Britain by way of separate Regulations made under section 2(2) of the European Communities Act 1972 (the [Hydrocarbons Licensing Directive Regulations 1995 \(S.I. 1995/1434\)](#)) and section 6 of the Petroleum (Production) Act 1934 (the [Petroleum \(Production\) \(Seaward Areas\) \(Amendment\) Regulations 1995 \(S.I. 1995/1435\)](#)) and the [Petroleum \(Production\) \(Landward Areas\) Regulations 1995 \(S.I. 1995/1436\)](#)). Under the ‘Seaward Areas’ Regulations, the Department of Energy and Climate Change grants all authorisations in the territorial seas around Great Britain and Northern Ireland. No equivalent of these Regulations is therefore required in Northern Ireland.
- 2.4 The EU Commission was notified in 1995 (mistakenly as it now transpires) that the UK had implemented the Directive. However, it was not implemented in Northern Ireland and the Department of Enterprise, Trade and Investment is now taking steps to transpose the Directive as quickly as possible.

2.5 The purpose of this consultation paper is to advise consultees of the steps being taken to implement the provisions of the Directive and offer consultees the opportunity to comment.

THE HYDROCARBONS LICENSING DIRECTIVE

3

- 3.1 [The Hydrocarbons Licensing Directive \(Council Directive 94/22/EC\) \(“the Directive”\)](#) 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 and transparent access to hydrocarbon resources within member states with the objective of encouraging competition and developing the internal energy market. The Directive came into effect on 1st July 1995.

- 3.2 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 authorisations (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. A licence 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.

- 3.3 Access is encouraged by a requirement on member states to publish Notices in the Official Journal of the European Union describing areas available for licensed activities.

- 3.4 Implementation of the Directive in Northern Ireland requires new regulatory provisions relating to applications for licences to search or bore for or produce petroleum. In addition, the Department will consider using the legislation proposed to implement the Directive to update the licensing framework for petroleum licences, bringing it into line with that in place in Great Britain.
- 3.5 A summary of the requirements of the Directive is set out at **Annex B**.

CURRENT POSITION IN NORTHERN IRELAND

– the 1964 Act and the 1987 Regulations

4

- 4.1 Provisions governing petroleum licensing arrangements in Northern Ireland are contained in the Petroleum (Production) Act (Northern Ireland) 1964 (“the 1964 Act”). The 1964 Act provides that the Department may make regulations prescribing the manner in which applications for licences may be made and model clauses which may be incorporated in licences to search and bore for, and get, petroleum.
- 4.2 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 to be incorporated in a licence are contained at present in the [Petroleum Production Regulations \(Northern Ireland\) 1987](#) (“the 1987 Regulations”).
- 4.3 At present all of Northern Ireland is available for applications for petroleum licences and the Department proposes to continue with that arrangement initially. Applicants can submit applications at any time in respect of any part of Northern Ireland. Applications are dealt with on a first come, first served basis. Since 1st July 1995 the Department has granted nineteen petroleum licences of which fifteen have now expired.
- 4.4 The Department prepares annual reports “Minerals and Petroleum: Exploration and Development in Northern Ireland” which contain details of licences granted. These reports can be accessed at the Minerals and Petroleum section of the Energy homepage at www.detini.gov.uk

PROPOSED NEW ARRANGEMENTS

5

- 5.1 It is now proposed to implement the Directive in Northern Ireland. The Department will also consider bringing the Northern Ireland licensing framework into line with Great Britain.
- 5.2 The Directive requires publication of a Notice in the Official Journal of the European Union indicating areas available for licence applications to search, bore for, or produce petroleum. Under Article 3 of the Directive, member states are obliged to establish a procedure for submission of applications for licences in line with either Article 3.2 or 3.3. The Department will discuss the preferred procedure and timing for publication of the Notice with the EU Commission.
- 5.3 The Article 3.2 procedure begins with a Notice in the Official Journal inviting applications in respect of specified areas, setting out the selection criteria and the date/time within which licences will be granted. This is the licensing round procedure which is in place in Great Britain. Under Article 3.3 a Notice containing the selection criteria can be placed in the Official Journal to indicate areas which are permanently available, or which have been previously subject to an Article 3.2 procedure. Under this process, member states must publish a Notice in the Official Journal indicating the areas which are available under Article 3.3 and where additional information can be obtained.
- 5.4 As mentioned in paragraph 4.3, it is proposed that initially all of Northern Ireland would continue to be made available for applications for petroleum licences under the new licensing arrangements. At some time in the future the Department may wish to move to an Article 3.2 arrangement along the lines of that in operation in Great Britain. The Department would welcome

comments from consultees on a preferred Notice procedure and on the proposal to bring the Northern Ireland licensing framework into line with that in Great Britain.

- 5.5 The Department will not be able to accept or consider any applications for new licences before the date on which the Directive is implemented in Northern Ireland.
- 5.6 Transposing the Directive will require two sets of Regulations. Firstly, some provisions of the Directive can be implemented by means of Regulations made under the 1964 Act. Section 13 of the 1964 Act provides that the Department may make Regulations prescribing, among other things, the manner in which applications for licences may be made, the conditions as to the extent and shape of areas in respect of which licences may be granted and the model clauses which may be incorporated in licences. Secondly, other provisions of the Directive cannot be made under the 1964 Act and must be implemented under powers contained in section 2(2) of the European Communities Act 1972 (“the 1972 Act”).

The 1964 Act Regulations

- 5.7 The Regulations made under section 13 of the 1964 Act will implement provisions in Article 3 of the Directive by introducing a new procedure for applications for licences. These Regulations will provide for details of the areas available for licensed activities to be published in the Official Journal of the European Union. They will also introduce a procedure whereby licensees may apply for a licence for an area contiguous to the area or areas covered by their existing licence if the Department decides that geological or production considerations justify the grant of such a licence.
- 5.8 The Department is also considering using these Regulations to bring the licensing framework in Northern Ireland into line with that in place in Great Britain. This would be done by drawing relevant provisions from the Petroleum (Production) (Landward Areas) Regulations 1995 along with the

model clauses to be incorporated in licences adopted from [Schedule 6 to the Petroleum Licensing \(Exploration and Production\) \(Seaward and Landward Areas\) Regulations 2004 \(S.I. 2004/352\)](#).

- 5.9 The new arrangements would replace the present provisions in the 1987 Regulations. The major change would be the introduction of provisions relating to the granting of seismic survey and methane drainage licences to Northern Ireland for the first time. This proposal to adopt a new licensing framework will be discussed with the industry and prospective applicants. The decisive factor is likely to be whether there would be an adverse impact on the timeframe for implementing the Directive.

The 1972 Act Regulations

- 5.10 The main implementation vehicle for the Directive's provisions will be the Regulations made under section 2(2) of the European Communities Act 1972. They will follow closely the provisions of the [Hydrocarbons Licensing Directive Regulations 1995](#) in Great Britain.

- 5.11 In line with the aim of encouraging access and ensuring equality of treatment, the Regulations will implement Articles 2 and 5 of the Directive by restricting the criteria which the Department may take into account when considering an application for a licence. The criteria include the technical and financial capability of the applicant and the way in which the applicant proposes to carry out the activities permitted by the licence. Where the applicant holds, or has held a licence under the 1964 Act, any lack of efficiency and responsibility displayed by the applicant may be taken into account. Other relevant criteria may be used in a case where two or more applications are assessed as having equal merit.

- 5.12 The Regulations will provide that the criteria upon which applications are to be determined are to be contained in a Notice published in the Official Journal of the European Union. They will also provide that an application may be refused on the grounds of national security if the applicant is effectively

controlled by a company or nationals of a state which is not a member State but otherwise the criteria may not be applied in a discriminatory manner. When an application is unsuccessful, the applicant is to be notified on request of the reasons for the decision.

- 5.13 In accordance with Articles 5 and 6 of the Directive, the Regulations will limit the terms and conditions which may be imposed on the grant of a licence and will provide that such terms and conditions shall be applied in a non-discriminatory manner. These terms and conditions must be justified for ensuring the proper performance of licensed activities, or for providing for the payment of consideration for the grant of the licence or for the purpose of a number of specified considerations such as national security, public health or safety, protection of the environment and safety of installations and workers.
- 5.14 As required by Article 5, the Regulations will provide that where the Department has invited applications for a licence it shall make available to interested parties the terms and conditions upon which the licence will be granted. If a change is made in those terms and conditions prior to the grant of the licence, the Department must issue details of that change to any person who has requested a statement of terms and conditions.
- 5.15 The Regulations will implement Article 4 of the Directive by requiring 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 to restrict the circumstances in which the Department may extend a licence. As required by Article 6, they will also limit the Department's powers either to request information from a licensee or to monitor the activities of the licensee.

ANNEX A

Freedom of Information Act 2000 –

Confidentiality of consultations

1. Following completion of the consultation process, the Department may publish your response, and all other responses to the consultation. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.

3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
 - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided

- the Department should not agree to hold information received from third parties “in confidence” which is not confidential in nature
 - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner’s Office at www.ico.gov.uk/

ANNEX B

Summary of requirements of Council Directive 94/22/EC (“the Hydrocarbons Licensing Directive”)

Article 1 of the Directive deals with definitions of phrases and words used within the Directive.

Article 2 makes it clear that it is for member states to determine which areas within their territory are to be available for prospecting, exploring for and producing hydrocarbons. However, once an area is made available, member states must ensure non-discrimination in terms of both access to and exercise of those activities. Member states may refuse to grant a licence on the grounds of national security, to a company controlled by non-member state nationals.

Article 3 obliges member states to establish a procedure for submission of applications for licences in line with either Article 3.2 or 3.3.

The **Article 3.2** procedure begins with a Notice in the Official Journal inviting applications from all interested companies, either at the initiative of the Department making an area available or by the Department following an application for a licence being made in respect of a particular area. Applicants must be given at least 90 days to submit an application. Notices must specify the area to which the Notice relates or in respect of which the application has been made, the type of licence and selection criteria for applicants and must also state the date or time limit for granting the licence. This procedure is the ‘licensing round’ system in place in Great Britain.

The **Article 3.3** procedure permits licences to be granted without following the above procedure where an area is permanently available or has previously been subject to

the Article 3.2 procedure but this did not result in a licence being granted. Under this process, member states must publish a Notice in the Official Journal indicating the areas which are available under Article 3.3 and where additional information can be obtained.

Article 4 sets out rules to be followed in determining the areas available for licensed activities. Where the Article 3.2 procedure is used, objective criteria must be used to determine the size of area and these must be made available before the submission of applications. Under Article 4 member states must ensure that a licence should not last beyond the time necessary to complete the relevant activities, although the time permitted under a licence may be extended if necessary to complete the activities authorised by the licence.

Article 5 sets out the criteria which must and may be used to determine applications for licences. These must be published in the Official Journal. The mandatory criteria are: (a) the technical and financial capability of the company; (b) the way in which the company proposes to prospect, explore and/or bring into production the area in question; and (c), where the licence has been put up for tender, the price to be paid. If after evaluating under (a), (b) and, if relevant, (c) two or more applications are of equal merit other relevant and non-discriminatory criteria may be used to make a final choice.

Member states may also take into consideration any lack of efficiency and responsibility shown by a company which holds or has previously held a licence.

Conditions and requirements applying to the various types of licence must be established and made available to interested companies. Any changes must be notified to them and all criteria, conditions and requirements must be applied in a non-discriminatory manner.

Article 6 limits the conditions and requirements that can be placed on a licence and requires member states to ensure that monitoring of licence holders and requests for information are limited to ensuring that the conditions and requirements are being adhered to.

Article 7 requires provisions giving specific companies exclusive rights to be abolished. (This does not preclude such exclusive rights being given as part of the grant of a licence).

Article 8 relates to circumstances where member states have become aware that companies are having difficulties accessing or exercising hydrocarbons activities in non-member state countries. Member states must notify the Commission of such difficulties.

Article 9 requires member states to publish and send to the Commission an annual report on the areas which have been opened for prospecting, exploration and production licences granted and details of those licensees as well as estimated reserves in the member state.

Article 10 obliges member states to notify the Commission of those authorities in their area with responsibility for granting licenses. DETI is the competent authority for Northern Ireland.

Articles 11 and 14 apply the Directive to licences granted after 1st July 1995 and require the member state to transpose the Directive into national laws by that date.

Article 12 amended Council Directive 90/531/EEC. This Directive set rules in relation to public procurement. It has been replaced by Council Directive 93/38/EC, Article 2.2 (b)(i) of which applies the provisions of the Directive to companies involved in exploring for or extracting oil, gas, coal or other solid fuel.

Article 13 makes specific provision in relation to Denmark.

Articles 15 and 16 address the Directive to the member states and provide for it to enter into force once published in the Official Journal.

ANNEX C

Equality, Regulatory and other impact assessments

Equality Impact

1. Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:

 - between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - between men and women generally;
 - between persons with a disability and persons without; and
 - between persons with dependants and persons without.
2. In addition, without prejudice to its obligations above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.
3. We have carried out an equality screening exercise for the implementation of the Hydrocarbons Licensing Directive in Northern Ireland. The Regulations which are needed to implement the Directive will establish the framework for a new licensing regime and also provisions with which applicants for licences must comply. The emphasis of the new arrangements, in line with the requirements of the Directive, is to ensure that the Department gives equal opportunity for applications to be made and applies the provisions equally and without discrimination, thereby promoting competition. There is no differential impact on any of the section 75 groups.
4. A full Equality Impact Assessment, therefore, is not required. If you would like a copy of the screening forms, please contact us.

Regulatory impact

5. The Regulations will have minimal impact on business and no impact on charities or voluntary bodies. A very small number of applications is received by the Department. The new arrangements will be more open and transparent and new licence applications will have to conform to the requirements of the Directive. The fee in respect of a petroleum licence application will not be changed and the fees to apply to two new types of licences under the Regulations are negligible.

Environmental and other impacts

6. The main impact of the Regulations which implement the Directive will be in the procedural arrangements for the Department to determine and grant licence applications. The emphasis is on ensuring equality of opportunity for applications to be made and for the procedural arrangements to be applied in a non-discriminatory way. The new provisions will bring the licensing framework here into line with that in place in Great Britain.
7. Since all of Northern Ireland has been open for petroleum exploration and development, and since it is proposed initially to continue with this arrangement, a detailed environmental assessment is not required in respect of the new licensing procedures.
8. With regard to those areas which are the subject of specific licence applications, the Department will take a similar approach to that adopted by the Department of Energy and Climate Change (DECC) for onshore Great Britain licence applications, in asking applicants to demonstrate an awareness of environmental issues and regulatory requirements. Applicants will be required to submit, as part of their application, an 'Environmental Awareness Statement' which should set out the applicant's understanding of
a) Northern Ireland's onshore environmental legislation which will be relevant

to the exploration, development and production stages of a project, and b) the broad environmental sensitivities of the areas for which they are applying, and how they propose to address those sensitivities in operational planning. Applicants will be advised to liaise with the Northern Ireland Environment Agency (NIEA) in the preparation of this statement.

9. In the early stages of exploration, a considerable amount of time is spent on desk studies, acquiring new geophysical data and conducting small scale geological and geochemical surveys, where the techniques are generally non-invasive and therefore of insignificant environmental impact. When the licence holders move to the drilling stage, it is usual for planning permission to be required and an Environmental Impact Assessment will be required. Even in cases where such drilling may be considered 'permitted development', the licensee will be required to submit their plans to the Planning Service which will liaise with NIEA and other consultees, and conditions may be stipulated as to working practices, site restoration, etc.

Your views on this consultation are welcome.

August 2009

Minerals Branch
Colby House
Stranmillis Court
Belfast
BT9 5BF

Email : minerals@detini.gov.uk

Telephone : 028 9038 8462

Fax : 028 9038 8461

Textphone : 028 9052 9304