EXPLANATORY MEMORANDUM TO

THE PETROLEUM PRODUCTION (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010

S.R. 2010 No. 169

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 13(1) of the Petroleum (Production) Act (Northern Ireland) 1964 ("the 1964 Act") and is subject to the negative resolution procedure.

2. Purpose

2.1. The main policy objectives of the Statutory Rule are to complement the Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010 and to bring licensing arrangements in Northern Ireland more closely into line with those in Great Britain.

3. Background

3.1. The Statutory Rule introduces new requirements for applications to the Department of Enterprise, Trade and Investment ("the Department") for licences to bore or search for, and get, petroleum in Northern Ireland, and also new provisions for licences. For this purpose, it amends the Petroleum Production Regulations (Northern Ireland) 1987 ("the 1987 Regulations").

3.2. Provisions governing licensing arrangements in Northern Ireland are contained in 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 the Department may incorporate in any licences under the Act.

3.3. 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 Schedules 1 and 2 to the 1987 Regulations respectively. This Statutory Rule amends the 1987 Regulations establishing new requirements in relation to the information to be contained in, and to accompany, an application for a licence and revising the model clauses which may be incorporated in a licence.

3.4. The Hydrocarbons Licensing Directive (Council Directive 94/22/EC) which applies to the granting of licences with effect from 1st July 1995 contains common rules and procedures to encourage greater access to licensing arrangements across member states. The Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010 implement those provisions of the Directive dealing with the manner in which licence applications are considered and determined, the terms and conditions

which may be applied when a licence is granted, the duration of a licence and the information which the Department may require from a licensee.

3.5. This Statutory Rule introduces new definitions in Regulation 1 of the 1987 Regulations and substitutes a new Regulation 2 to make clear that an application for a licence may be made at any time. An application must be made in accordance with the requirements of both Regulation 3 of the 1987 Regulations and Regulation 3 of the Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010 which requires a notice to be published in the Official Journal of the European Union.

3.6. A new Regulation 3 setting out the information to be included in an application for a petroleum licence is substituted in the 1987 Regulations. The new Regulation also describes other information requirements for applications, including those made by bodies corporate and applicants which are not bodies corporate. The information to be contained in an application for a licence is set out in a new Schedule 1 to the 1987 Regulations. The changes made update the current provisions and bring the information requirements in relation to an application for a licence into line with those in Great Britain.

3.7. The model clauses which may be incorporated in a petroleum licence are set out in Schedule 2 to the 1987 Regulations. Clause 2 in that Schedule is replaced by new Clauses 2, 2A, 2B and 2C which describe the various terms of a licence and how a licence may be continued from one term to the next. The option of inserting a break clause in a licence is introduced, allowing a licence to end after a period of three years.

3.8. The terminology for the different terms of a petroleum licence has been amended to bring it into line with that in Great Britain. At present a petroleum licence could run for an "initial term" of 5 years, a "first renewal term" of 5 years and a further "30 years renewal term". Under the new provisions the licence may run for an "initial term" of 5 years, a "second term" of 5 years and a "production period" of up to 20 years. The new Clause 2B allows the Department to extend the second term of a licence so long as the extensions in aggregate do not exceed 20 years (in other words an extension of the second term will "eat into" the 20 year production period). There is provision for a further extension of the licence after the production period if this is required to secure the maximum economic recovery of petroleum from the licensed area.

3.9. A change has been made to require licensees to surrender not less than half of the licensed area after the initial term to encourage licensees not to retain more of the area than they need, again in line with provisions in Great Britain.

3.10. The Statutory Rule makes a number of other consequential changes to Clauses 3, 4 and 9 in Schedule 2 to the 1987 Regulations as well as inserting a new Clause 4A dealing with the consequences of determination of a licence. Amendments are made to Clauses 21, 22 and 24 in Schedule 2 to prescribe more precisely than previously, periods within which information must be supplied to the Department by a licensee. Legislative references in Clauses 39, 40 and 41 are updated.

4. Consultation

4.1. The Department has consulted on the new licensing arrangements required by the Hydrocarbons Licensing Directive. Consultees were invited to comment on the desirability of bringing licensing arrangements in Northern Ireland fully 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 applies equally to all applicants and licensees. It also complements the Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010 which implement the Hydrocarbons Licensing Directive. The rationale underpinning the Directive is to ensure equal opportunity for applications to be made and to require that all provisions of the Directive are applied equally and without discrimination in relation to all applicants.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has not been prepared for the Statutory Rule because it has no impact on business, charities or voluntary bodies. A very small number of licence applications is received by the Department. The fee applicable to licences remains unchanged.

7. Financial Implications

7.1. The Statutory Rule has some financial implications for the Department although these are manageable. The impact on administrative arrangements for processing licence applications is negligible as these are already in place in the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Statutory Rule applies to Northern Ireland apart from the territorial sea adjacent to Northern Ireland. Licensing arrangements in Great Britain, including model clauses to be included in licences, differ from those in Northern Ireland although the amendments made by these Regulations bring arrangements more closely into line.

11. Additional Information

11.1. Not applicable.