NORTHERN IRELAND (EXECUTIVE FORMATION AND EXERCISE OF FUNCTIONS) ACT 2018: DECISION MAKING IN ACCORDANCE WITH GUIDANCE PUBLISHED BY THE SECRETARY OF STATE

This template should be completed as a record of each decision, or inter-related group of decisions, which a senior officer of a department has taken under the authority conferred by the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 and in accordance with the associated Guidance published by the Secretary of State for Northern Ireland.

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<th>RECORD OF DECISIONS TAKEN</th>
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<td>DEPARTMENT: Economy</td>
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<td>RESPONSIBLE SENIOR OFFICER</td>
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<tr>
<td>Name: Geraldine Fee</td>
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<td>Grade: 5</td>
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<td>Date: 20 December 2018</td>
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<td><strong>3</strong></td>
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<td>DESCRIPTION OF DECISION</td>
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This section should also be used to indicate whether, in the opinion of a Senior Officer, the decision is a major policy decision within the terms of paragraph 9 of the Guidance.

The Department is in receipt of a petroleum application from EHA Exploration Limited (EHA) (submitted to the Department on 6 June 2016). The intention by the Department for the Economy (DfE) to award a company a Petroleum Licence (PL) in Northern Ireland (NI) would be referred to the Minister.

On receipt of an application for a petroleum licence, the Department checks the validity of an application against the requirements of the petroleum licensing legislation. If valid, the Department assesses the financial capacity and viability of the applicant and also assesses the technical capacity of the applicant and the proposed work programme.

The Department has checked the validity and fully assessed the application. In the absence of a Minister, processing of these applications was paused; however, in light of new legislation and guidance from the Secretary of State, we now need to consider what action can be taken by officials in the absence of a Minister.

At this stage, the Department would normally put a submission to the Minister, to advise and seek comments before moving to advertise the Department’s intention to grant a PL and invite public representations. Ministers would have input at this stage as it is in effect endorsing the Department’s assessment that a PL should be awarded and a Minister would be a check on the Department and could challenge our rationale and our assessment against the legislation before moving to advertise the Department’s intention to grant a PL.
It is debatable whether the award of a PL could be considered a major policy or project decision and, therefore, outside the authority of senior civil servants. Alternatively it could be argued that the decision is appropriate to the Department as the petroleum legislation indicates that the decision to award a licence is at the discretion of the Department as opposed to the Minister.

The public interest test has, therefore, been considered.

4 PUBLIC INTEREST

This section should be used to explain whether there is a public interest in taking a decision at this time rather than deferring it during the period up to 26 March 2019. Information should be provided on how the principles at Paragraph 11 (a) – (d) of the Guidance have been taken into account:

(a) the maintenance of sustainable and efficient public services.
(b) consistency with the principles and commitments of the former Executive and Ministers.
(c) contribution to the 2018-19 Outcomes Delivery Plan and/or previously agreed capital investment programmes.
(d) The impact of deferral.

(a) The maintenance of sustainable and efficient public services.

Petroleum is a non-renewable form of energy resource and the raw material for the petrochemicals industry. In Northern Ireland, approximately 60% of electricity supply is generated from fossil fuels, primarily gas, and over 90% of heat. Global supply of fossil fuels are largely controlled by the major producers (USA, Russia and OPEC). The balance of supply and demand has a direct effect on the market price of oil and gas globally, and for Northern Ireland.

Although NI may have significant petroleum resources beneath its surface, no company has yet produced any petroleum in NI in over 50 years of exploration.

(b) Consistency with the principles and commitments of the former Executive and Ministers.

Past practice has been to obtain Ministerial sign-off to commence a public consultation exercise advertising DfE’s intention to award a company a PL in NI covering an initial 5-year term and the subsequent award of a PL.

In line with previous practice, the Department places advertisements in the local press and online informing the general public of its ‘intention’ to grant a PL.

While Minister Hamilton had noted DfE’s intention to award and to move to consult, this process was halted under pre-election guidance. Given the time which has elapsed and the potential public controversy aroused by these
decisions, it would be questionable to now rely on the previous Minister’s earlier position.

Careful consideration would also need to be given to whether any decision on the award of a petroleum licence, whether for conventional or unconventional targets, would be considered controversial and, therefore, require NI Executive decision.

(c) Contribution to the 2018-19 Outcomes Delivery Plan and/or previously agreed capital investment programmes.

The discovery and development of indigenous oil and gas resources could contribute towards the growth of a strong, competitive, regionally balanced economy, with the potential creation of a small number of jobs through direct employment.

However, the transition from exploration to development is not guaranteed and is one that would take several years, at least.

(d) The impact of deferral.

Northern Ireland is entirely reliant on imports for its requirements of oil and gas and, as such, its economy is vulnerable to changes in the global oil price. In recent years, average prices exceeded $100 per barrel in 2011 – 2013 but dropped to about $40 in 2016 before recovering to approximately $70 in 2018. Although indigenous production would not significantly affect wholesale prices in Northern Ireland, it would increase security of supply and provide public revenue through company investment and taxation.

It should be noted that the granting of a petroleum licence and the onset of petroleum exploration is no guarantee that petroleum resources will be discovered or, after discovery, that they will be developed.

If the Department continues to take no further action on this application which it has deemed to be “valid” and awaits the appointment of a Minister to seek his/her views on the way forward there is an inherent risk of challenge by the applicants given the commercial interests at stake. Such a deferral might also be seen as a deterrent to inward investment – i.e. that it is difficult for decisions to be made on new projects in NI in the absence of an operating Executive.

It is anticipated that there would be considerable opposition to onshore oil and gas exploration given the previous opposition to conventional exploration drilling by InfraStata at Woodburn.

Conclusion on public interest

If the Department were to proceed to the normal consultation process, this requires the Department to come to a decision in the absence of a Minister i.e. that all things being equal it would award a PL. This option would move the process forward and would be welcomed by the applicant but is likely to result in challenge from opposition groups as the Department would be indicating it had arrived at an intended position in the absence of a Minister.

While the discovery of a potential indigenous oil or gas supply would be in the public interest there is considerable controversy around oil and gas exploration
and so it is considered that there is not an overriding public interest to move to notify our intention to award a PL in the absence of a Minister.

5  FURTHER CONSIDERATIONS

Provide details of any other material considerations taken into account.

Consideration of Next Steps

Under the SoS guidance, if the Department cannot take a decision in the absence of Ministers, it must ensure it undertakes all preparatory work to inform a decision by a future Minister.

It is, therefore, proposed that the Department would place a notification in local newspapers and online to commence a consultation process to inform the Department’s recommendation to a future Minister on the PL applications.

In this way, the Department would be open and transparent about the fact it has received a valid PL application and wishes to consult in order to inform recommendations to a future Minister.

While the applicant would prefer that the Department would consult on its intention to award a licence, this interim approach is acceptable to them in the absence of a Minister. This option is compatible with earlier legal advice and would move the process forward while allowing the Department to remain objective in its consideration and allow all those who may have concerns or be supportive to contribute and inform recommendations to a future Minister.

6  CROSS CUTTING

If the decision cuts across or impacts on the responsibilities of another department, indicate what discussions have taken place with the relevant department(s) and what account has been taken of its / their views as set out in paragraph 12(a) of the Guidance.

The next steps proposed would involve all NI Government Departments, plus other external organisations, by way of a public consultation exercise to seek their comments to inform future advice to a Minister on the award of a PL to the applicant.

7  ACCOUNTABILITY

This section should be used to confirm that the decision complies with relevant statutory guidance, requirements and obligations as set out in paragraph 13 of the Guidance.
All relevant Statutory requirements have been adhered to in the assessment of the PL applications.

DSO advice refers to section 3(1) of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 which states that the absence of Northern Ireland Ministers does not prevent a senior officer of a Northern Ireland department from exercising a function of the department during the period for forming an Executive if the officer is satisfied that it is in the public interest to exercise the function during that period. In accordance with section 3(2), the officer must have regard to guidance issued by the Secretary of State.

For the reasons set out above, it is debatable whether the decision to award a PL could be argued to be a major policy or project decision. The public interest having been considered, it is also concluded that the public interest test is not met and, therefore, the decision falls outside the authority of senior civil servants in the absence of Ministers.

However, it is important that all preparatory steps are taken in such a situation to inform a future decision by a Minister and therefore it is proposed that the Department would place a notification in local newspapers and online to commence a consultation process to inform the Department’s recommendation to a future Minister on the PL application received.

8 CONSULTATION

State if any consultation has taken place with individuals or organisations affected by the decision as set out in paragraph 14 of the Guidance.

The next steps proposed would involve all NI Government Departments, plus other external organisations, by way of a public consultation exercise to seek their comments to inform future advice to a Minister on the award of a PL to the applicants.

Liaison with the applicant companies would be ongoing during this process.

Geraldine Fee

Senior Officer of the Department

[Signature]

Permanent Secretary

Date: 12/18