

*OFFSHORE ELECTRICITY
GENERATING STATIONS -
NOTE
FOR
INTENDING
DEVELOPERS*

INDEX

Rev.01 May, 2001

Summary

4

Government and Ministerial Policy	9	
General Note	10	
Definitions	10	
Currency	10	
Applications made for Licences prior to entry into force of this Policy	11	
Licences and Leases in Respect of Offshore Electricity		
Generating Stations	12	
Consultation with and Permissions needed from other Agencies		13
Foreshore Licence Applications to allow Investigation of a Site	18	
Date of Licence to take effect	18	
Expectations of the Minister for the Marine and Natural Resources	19	
Foreshore rentals and expenses to be borne by the Licensee	19	
Right of Minister to Modify Area Sought	20	
Legitimate Expectation to a Lease to allow Development	21	
Supply of Information to the Department	22	
Exclusivity of Licence areas	24	
Activation of an Expression of Interest	24	
Application for Foreshore Lease to Allow Development	26	
Authorisations and Licences to construct, generate and supply electricity	26	
Financial Ability	26	
Extent of Lease Area	27	
Rental/Royalty charges for Lease areas	27	
Provision of Accounts	27	
Commencement of construction and electricity generation	28	
Decommissioning	28	
Surrender or Loss of Licence to Generate/Supply Electricity	28	
Transfer of Leases or Licences and Sale of Shares	29	
Visual Issues and Guidelines for creating photomontages	30	
Environmental Impact Assessment	33	
Bi-monthly Progress Report Format	38	
Foreshore Licence Application Form	39	
Foreshore Lease Application Form	43	
Draft Sample Licence	48	
Procedures and target timescales for processing Lease	57	

A CHART SHOWING MILITARY AREAS AND A CHART SHOWING THE LOCATION OF SUBMARINE TELECOMMUNICATIONS CABLES ARE BETWEEN PAGES 15 AND 16

This document is intended to refer to applications for Foreshore Licences and Leases in respect of commercial generating stations only. Where an applicant intends to test a new technology on a demonstration or pilot basis, or to carry out other tests which may be relevant to the development of new technology, separate arrangements may apply subject to the Minister being satisfied that it is clearly a demonstration project. Application should be made on the form appropriate for commercial development but it should clearly be marked to indicate that it is not a commercial development but a demonstration or pilot programme. Projects consisting of more than one turbine will not, ordinarily, be accepted as being demonstration or pilot projects. Projects accepted as being for demonstration or test purposes and given treatment other than in accordance with the financial or other terms outlined in this document will not entitle the Licence holder to any commercial development rights over the site in question.

SUMMARY

The issue of investigation of suitability of sites (Licence) and construction and operation of electricity generating stations (Lease) shall be addressed separately.

FORESHORE LICENCES FOR INVESTIGATION

- 1. Foreshore Licences should, ordinarily, be valid for four (4) years and not normally be subject to extension. Where the Minister is satisfied that, because of *force majeure* applying, it was not possible to complete investigations within the four year licence period the Minister may, at his sole discretion and subject to any additional or differing conditions as he may think appropriate, extend the period of validity of the Licence for one or more periods, each of which shall not exceed twelve months.**
- 2. Multiple applications may be accepted for Foreshore Licences over the same area with the first applicant having prior rights to development.**
- 3. Where an application is received for a Foreshore Licence over an area which is already the subject of application by (or under Licence to) another party, the second or subsequent applicant may, if unwilling to commit to exploration of the suitability of the site at that time, register an “expression of interest” which will entitle the applicant to have an opportunity to reactivate the application in the event of a subsequent party applying for the area or the first applicant surrendering or losing his rights in any way.**
- 4. Foreshore Licences issued for investigation of the site will, as an incentive to development of our marine energy resources, be granted at a nominal rent of €5. per annum, subject to a deposit of €100,000 being made on the day of acceptance of the Licence conditions for the particular area.**
- 5. The deposit of €100,000 will be returned in full and with interest less any direct costs incurred in setting up and closing an account, provided that the Licence is worked satisfactorily, reporting requirements are complied with and, a valid application for a Foreshore Lease to construct and operate is made within twelve months of the expiry of the Licence, or, alternatively, evidence acceptable to the Minister that the site is unsuitable for electricity generation, having regard to current technologies and the type of generation proposed at the time of application for the Foreshore Licence, is produced to the Minister.**
- 6. Where the Licensee is satisfied that pending technological or other advances will make a site suitable for development within two years of the expiry of the Licence, application may be made for the reservation of rights over the area for a period not exceeding two years from expiry of the Licence to ensure that the expenditure incurred in investigating the suitability of the site is not wasted. Any such reservation of the site will be subject to the payment of a deposit of €100,000 which will be refunded with interest accrued less any direct costs incurred in setting up and closing an account, on signing of a Lease for development of a generating station on the site within the two year reservation period.**

- 7. Where the conditions at 5 (or if appropriate 5 and 6) above are not met, the deposit and any interest which may have accrued, will be forfeited to the Exchequer.**
- 8. Where the Licensee has only secondary rights over the area, the deposit will be refunded, with interest accrued less any direct costs incurred in setting up and closing the account, where the Licensee with prior rights makes valid application for a Foreshore Lease to allow construction and operation of a generating station on the site provided that the Licence carrying secondary rights has been worked properly and all reporting arrangements have been met.**
- 9. A separate Foreshore Licence will normally be required for plotting the route of cable from a proposed windfarm to the national grid onshore. This will be issued free of charge and without a further deposit but the deposit held on foot of the Foreshore Licence for investigation will be attached to this Licence also.**
- 10. Holders of Foreshore Licences will be required to furnish the Department, every two months, with summary copies of all information gained in respect of the site and a progress report on preparation of EIS, planning permission for land based activities, Licences, etc. required from the Commission for Electricity Regulation, etc. Where the Department requires a detailed report in respect of any particular issue(s) the report(s) will be promptly made available by the Licensee.**
- 11. Where commercial confidentiality is claimed over any information furnished the Department will, subject to its being made available to the Marine Institute and to the provisions of the Freedom of Information Act, respect such confidentiality at least during the life of the Licence and for twelve months after expiry.**
- 12. Unless a valid application for a Foreshore Lease to allow construction is made within twelve months of the expiry or surrender of the Foreshore Licence the confidentiality attaching to the information will be deemed to have expired and the information will thereafter be in the public domain.**
- 13. Commercially sensitive information furnished in respect of any application or arising from the grant of a Licence will, where appropriately endorsed, be subject to special protection but will, in all cases, be subject to the Freedom of Information Act.**
- 14. Where a valid application for a Foreshore Lease is made within twelve months from the expiry or surrender of a Foreshore Licence the confidentiality will continue in force for the period while the Lease application is being processed and will thereafter be in the public domain (subject to maintaining commercial confidentiality of documents which are clearly commercially sensitive) unless the Lease conditions provide otherwise.**
- 15. A Lease may be applied for at any time during the currency of the Licence or within a period of twelve months commencing on the date of expiry of the Licence. Where an application for a Lease is made during the currency of the Licence the Licence will be deemed to have been surrendered on the making of that application. This shall not, however, prevent the continued collection of wind strength data for the period to the normal expiry of the Licence.**

16. Where a Lease or Licence application is rejected by the Minister the applicant will have no further rights over the area subject to the Lease or the Foreshore Licence covered by that application.
17. Licences are non-transferable and the sale, trading or assignment of Licences will not be permitted.
18. The Minister reserves the right to reject any application or to modify the area sought under Licence.

FORESHORE LEASES FOR THE CONSTRUCTION AND OPERATION OF OFFSHORE ELECTRICITY GENERATING STATIONS

1. Applicants must have held a Foreshore Licence for site investigation in good standing and make valid application for a Foreshore Lease, at latest, within twelve months of the expiry of the Licence.
2. A valid application must be accompanied by evidence that the applicant holds an authorisation and licences or other valid permission issued by the Commission for Electricity Regulation, or such other authority (including authorities in other jurisdictions) as may be appropriate at the time, allowing the construction and operation of a generating station of the type and output for which a Foreshore Lease is sought. Where the licences for generation and supply are not held by the applicant the Minister will require evidence of a binding and irrevocable contractual agreement with bodies holding such licences. Additionally an EIS and copy of Planning Permission for shore based works should accompany the application.
3. Full Business Plans, including sources of capital, and covering the period through construction and the first five full years of operation will be required with the application.
4. A Tax Clearance Certificate or other evidence that the applicant is in good standing with the Revenue Commissioners (or appropriate authority where the applicant company is based outside the jurisdiction) will be required before a Foreshore Lease can issue.
5. The Minister may choose between normal commercial rents based on the nominal output of each turbine ((c) €3,800p.a. on a rating of 1 MW), or a percentage of gross revenue (2-2.5%) being paid as rental over the site sought. In the latter case a dead rent will be payable to the Minister on signing and sealing of the Lease against which payments of the percentage of gross revenue due to the Minister may be offset. In the case of commercial rents being charged, the rents will be subject to review every five years. Where a percentage of gross revenue is charged, revenue protection measures are required to ensure that evasion of sums due to the Minister is not permitted. Where the lease applicant is the holder of the authorisation to construct the proposed generating station but does not hold the licences or other necessary permits to generate and supply electricity a commercial rent will be charged in all cases. The detail will be finalised in the lease negotiation stage.
6. The maximum period of a Lease will ordinarily be 60 years but any Lease shall lapse on the withdrawal, expiry or other loss of a valid authorisation, licence or permission to construct a generating station, generate or supply electricity.

7. Full quarterly Management Accounts and annual report and accounts for the generating station will be required in all cases. These can be returned after inspection and consideration if required.
8. It will be a condition of any Foreshore Lease that construction commence within a stated period of the signing of the Lease and that construction be completed and generation and sale commence within an agreed period, both conditions subject to *force majeure*. The Department will liaise with the Commission for Electricity Regulation on this aspect.
9. The Lease area shall include the foreshore on which the foundation of each turbine is sited together with an area five metres from the foundation and the area covered by cables connecting individual turbines and connecting to the grid or customer on shore and five metres on either side of the cables and no other area. Where the Minister is satisfied that a greater distance is required this may be allowed for in Lease negotiations but rentals or other charges may be adjusted to take account of any increase in the Lease area.
10. Notwithstanding 9 above the Minister will not permit any activity within the vicinity of the Leased area which would interfere with the effective operation of the turbines or the safety of the turbines or the safety of any person.
11. As with a Foreshore Licence, a Lease will be subject to compliance with all laws and in particular with all legal instructions issued by Dúchas.

ENVIRONMENTAL ISSUES

1. Offshore generating stations will not, as a general rule, be allowed within 5 km. of shore but applicants may make a case for such if they consider that the proposed construction will not interfere unduly with the visual amenity of the area in question (both landscape and seascape). Such applications will be subject to special consultation procedures in the light of potential for excessive visual impact.
2. An Environmental Impact Statement will be required in respect of all proposed installations covering, in addition to statutory requirements, the issues addressed in the scoping document forming part of this proposal.
3. The Minister may include in any Lease granted conditions which will promote the development of spawning grounds or fisheries or conservation of marine heritage sites.

TRANSFER OF LEASES AND SALE OF SHARES

1. The Minister will not permit the sale of or other trade in Leases except where the Commission for Electricity Regulation or other appropriate authority has transferred the appropriate authorisations or licences or confirmed in writing its willingness to do so.
2. Foreshore Leases may not be assigned until construction has been completed and generation has taken place successfully for at least two years.
3. Where a Foreshore Lease is being transferred the Minister may, as part of the consent process, charge a fee for his consent.
4. The Minister's consent to any significant alteration in shareholding (45% or greater of the voting shares being held by any party or group of people or bodies having an association with one another other than by virtue of their share ownership in the Lessor company) of any entity holding a Foreshore Lease will be required but will not be unreasonably withheld.

Nothing in the foregoing shall operate to prevent the assignment of a Lease to a financial institution as security for borrowing of capital for the project the subject of the lease subject to the terms of such assignment being acceptable to the Minister and a separate Indenture entered into with the Minister. Furthermore, nothing in the foregoing shall prevent the Lessee assigning a lease within its own group of companies subject to the consent of the Minister.

GOVERNMENT AND MINISTERIAL POLICY

It is government policy to promote the use of renewable energy to generate power, including electricity. Electricity generation from fossil fuels is responsible for approximately 40% of carbon dioxide emissions which must be substantially reduced if the national targets under the Kyoto Agreement are to be met. Wind, tidal and wave energy sources have the potential to produce substantial amounts of totally “green “ electricity- more than the State could conceivably use - without contributing to the greenhouse gas effect which is projected to adversely impact on our climate and environment generally. Abstraction of wind, wave and tidal energy contribute positively to environmental protection.

It is the policy of the Minister for the Marine and Natural Resources to maximise the use of Ireland’s offshore resources. In so doing he is anxious to maximise the value of these resources to the State and to protect, to the maximum extent practicable, the environment and rights of other users. He will have regard for the competing demands on these resources both in general and in regard to particular areas. The possibility of offshore electricity generating stations being designed in such a way as to contribute, in a positive way, to the regeneration of fish stocks will receive ongoing consideration.

Certain areas will be prohibited for use as generating stations where safety at sea, protection of established shipping lanes, air navigation, telecommunications needs, defence, etc. demand it.

The Minister will seek an economic return to the Exchequer from licensed activities within the coastal zone.

The Minister sees this document as one which will evolve over time in the light of experience and having regard to new and as yet undeveloped technologies. Proposals for amendment to this Policy will always be welcomed and given consideration within the Department.

GENERAL NOTE

Definitions

In this document, the words “Foreshore Licence” or “Licence” refer to a Foreshore Licence issued, under the Foreshore Acts, 1933 to 1998, for the purpose of investigating the suitability of an area of foreshore as a site for ultimate construction of and operation of an offshore electricity generating station unless the context demands otherwise.

The words “Foreshore Lease” or “Lease” mean a Foreshore Lease issued under the Foreshore Acts, 1933 to 1998 for the purpose of constructing and operating (developing) an offshore electricity generating station.

“Lease area” means the area immediately beneath each turbine and its foundations (if any) and an area comprising 5 metres radius from each turbine or its foundation, which ever is the greater together with an area comprising 5 metres on each side of every cable connecting turbines either to each other or to the shore or both.

“Leased area” means the geographic area encompassing a number of lease areas held by the one lessee under one Foreshore Lease.

“Foreshore” in this document has the meaning given to it in section 1 of the Foreshore Act, 1933. In lay terms it covers the area from the ordinary high water mark to the twelve nautical mile limit and includes tidal rivers and creeks.

“Offshore”, for the purposes of this document, comprises the foreshore and the waters between the twelve nautical mile limit and the outer extremity of the Exclusive Economic Zone of Ireland.

“Dúchas” means the National Heritage Service of the Department of Arts, Heritage, Gaeltacht and the Islands.

While this document refers to the Foreshore Acts, 1933 to 1998 it should be noted that the Government’s **“Action Programme for the Millennium”** contains a commitment to legislate comprehensively for the integrated management of the coastal zone comprising the marine area and adjoining lands. The new legislation, which is targeted for introduction in the Houses of the Oireachtas in the latter half of 2001, is intended to replace the Foreshore Acts and to make provision for appeals in relation to Foreshore Leases and Licences and for an extended role for local authorities in relation to the coastal zone.

CURRENCY

Fees, charges and rentals are expressed in Euro (€). The exchange rate is €1 = IR£0.787564.

**APPLICATIONS MADE FOR LICENCES TO INVESTIGATE THE
SUITABILITY OF A SITE PRIOR TO THE ENTRY INTO FORCE OF THIS
POLICY**

Where an application was made for a Licence to allow the investigation of the suitability of a site prior to the coming into force of this Document, such application, unless the application has been disallowed, shall be deemed to be subject to the terms of this document.

POLICY

LICENCES AND LEASES IN RESPECT OF OFFSHORE ELECTRICITY GENERATING STATIONS

Applications for the use of foreshore for electricity generating stations to be situated offshore will be approached in two distinct stages.

Initially a Foreshore Licence will be required to allow for the investigation of the suitability of a site. Where the holder of a Foreshore Licence is satisfied that the results of such investigation of wind, tidal or wave strength and sea bottom are such as to warrant the development of a generating station on the site, application may be made for a Foreshore Lease for development, provided that the necessary authorisation and licences from the Commission for Electricity Regulation and planning permission for on-shore works are held by the applicant or that the applications for authorisation, licences and permissions are under consideration.

CONSULTATION WITH AND PERMISSIONS NEEDED FROM OTHER AGENCIES.

DÚCHAS

Other agencies have responsibility for various aspects of the marine environment. The most notable of these is Dúchas, the National Heritage Service of the Department of Arts, Heritage, Gaeltacht and the Islands, which has responsibility for both wildlife (National Parks and Wildlife Division) and national monuments (including ship wrecks) (National Monuments and Historic Properties Division). A Foreshore Lease or Licence will at all times be subject to the legal and legitimate requirements of both the National Parks and Wildlife Division and National Monuments and Historic Properties Division being met.

Applicants are urged to contact Dúchas and ascertain that Service's requirements before making application for a Foreshore Licence. The Service's requirements for a Foreshore Lease allowing construction and operation may differ from those for a Foreshore Licence which only allows for exploration. Where an application is received and the applicant has not entered into prior consultation with Dúchas, the application will be deemed to be incomplete and will not be deemed to be received by the Department until such time as evidence of such consultation has been received.

Intending developers are advised to maintain contact with the Service at all stages during the application process for both a Foreshore Licence and Lease.

**Contact: Development Applications Section
 Dúchas
 3rd Floor
 7 Ely Place
 Dublin 2 (Telephone: + 353 (0)1 6472300)**

COMMISSION FOR ELECTRICITY REGULATION

An authorisation to construct an electricity generating station and a licence to generate electricity and a licence to supply electricity issued by the Commission for Electricity Regulation or other appropriate authority will be required before a Foreshore Lease application will be accepted. Intending applicants for Foreshore Licences are advised to enter into at least preliminary discussions with the Regulator before committing themselves to any significant expense.

**Contact: Commission for Electricity Regulation,
 Plaza House,
 Belgard Road
 Tallaght
 Dublin 24. (Telephone: + 353 (0)1 4000800; fax.: 4000850)**

PLANNING PERMISSION

All offshore generating stations will have a land based element which will be subject to the Local Government Planning and Development Acts and Regulations. Intending applicants for Foreshore Leases should ensure that preliminary discussions are entered into with the appropriate local authority(ies) at an early date and that there are no

insurmountable difficulties facing the land based element of the development. Foreshore Leases will be contingent upon planning permission for the land based element being in place.

Contact: The local planning authority (ies) in the area(s) where on-shore works are to take place.

BORD GÁIS ÉIREANN

Notwithstanding any information which may be issued by the Department of the Marine and Natural Resources applicants are advised to consult with Bord Gáis as to the precise location of any active or proposed gas pipelines before applying for a Foreshore Lease.

**Contact: Bord Gáis Eireann
Inchera
Little Island
Co. Cork (Telephone + 353 (0)21 524000)**

TELECOMMUNICATIONS CABLES

Notwithstanding any information which may be issued by the Department of the Marine and Natural Resources, applicants are advised to consult with Eircom, E-Sat Telecom, Ocean and other licensed telecommunications operators regarding the location of submarine telecommunications cables and proposed cables and with the Office of the Director of Telecommunications Regulation to ascertain if any exclusion zones apply to electricity cable installations in the immediate area of telecommunications cables and whether the proposed works will interfere with microwave links before applying for a Foreshore Lease.

**Contact: Office of the Director of Telecommunications Regulation
Irish Life Centre
Abbey Street
Dublin 1 (Telephone +353 (0)1 8049600)**

RESTRICTED AREAS

As offshore structures are a potential hazard to marine navigation it is imperative that they be marked properly and effectively, in accordance with international guidelines. Therefore, the Commissioners of Irish Lights should be consulted in good time at the pre-planning stage.

**Contact: Inspector of Lights and Marine Superintendent
Commissioners of Irish Lights
16 Lower Pembroke Street
Dublin 2 (Telephone +353 (0)1 662 4525, Fax: + 353 (0)1 661 8094)**

In proposed or designated Special Protection Areas (SPA), Special Areas of Conservation (SAC) or Natural Heritage Areas (NHA) special legal and policy obligations apply. While these do not necessarily preclude development or other activities, any which are likely to significantly impact upon the integrity of an SPA, SAC or NHA will not, generally, be allowed. Consequently intending developers are advised to consult with Dúchas at the earliest possible stage.

