



BERMUDA

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

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TABLE OF CONTENTS

PART 1
PRELIMINARY

- 1 Citation
- 2 Interpretation

PART 2
LICENSING

- 3 Application for innovative licence
- 4 Procedure for determining application
- 5 Consultation
- 6 Consultancy deposit
- 7 Criteria for grant of licence
- 8 Matters to which the Authority shall have regard
- 9 Notice of proposed grant of licence
- 10 Objection to proposed grant of licence
- 11 Form and content of licence
- 12 Grant of licence
- 13 Conditions
- 14 Refusal of licence
- 15 Term of innovative licence
- 16 Suspension or revocation of innovative licences
- 17 Warning notices
- 18 Decision notices
- 19 Notices of discontinuance
- 20 Transfer of licence

PART 3
INNOVATION ZONES AND PROTECTION ZONES

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

- 21 Authority may make recommendations regarding innovation zones
- 22 Protection zones
- 23 Prohibited and restricted activities
- 24 Consultation with Minister responsible for environment

PART 4 OFFENCES

- 25 Damaging equipment
- 26 Damaging equipment: offence by master or owner of vessel
- 27 Engaging in prohibited or restricted activities; defences
- 28 Penalty

SCHEDULE 1 PROTECTION ZONES

SCHEDULE 2 PROHIBITED AND RESTRICTED ACTIVITIES

The Minister responsible for energy, in exercise of the powers conferred by section 54 of the Electricity Act 2016, and section 5 of the Regulatory Authority Act 2011, makes the following Regulations:

PART 1 PRELIMINARY

Citation

- 1 These Regulations may be cited as the Electricity (Innovative Licence) Regulations 2023.

Interpretation

- 2 (1) In these Regulations—
 - “Act” means the Electricity Act 2016;
 - “business day” has the meaning given in section 2 of the Regulatory Authority Act 2011;
 - “company” has the meaning given in section 2(1) of the Companies Act 1981;
 - “electricity sector” has the meaning given in section 2(1) of the Act;
 - “innovative business” means a business in the electricity sector approved by the Authority to be carried on by a licensee in an innovative manner;
 - “innovative licence” means a licence granted under section 32A of the Act that authorises the holder to engage in innovative business in the electricity sector;

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

“prohibited activities” means activities that are prohibited in a protection zone, which activities are listed in paragraph 1 of Schedule 2;

“protection zone” means an area designated in Schedule 1, in which equipment of an innovative licensee has protection;

“restricted activities” means the activities that are restricted in a protection zone, which activities (and the corresponding restrictions imposed on each activity) are listed in paragraph 2 of Schedule 2.

(2) For the avoidance of doubt, “land” includes land covered by water and any building erected on land.

PART 2 LICENSING

Application for innovative licence

3 (1) A company may apply, in such form as is specified by the Authority by administrative determination for the grant of an innovative licence under section 32A of the Act.

(2) An applicant that wishes to obtain or renew an innovative licence shall submit to the Authority the application, information and documents required by administrative determination, together with the relevant application fee.

(3) If—

(a) an application is pending; and

(b) the applicant becomes aware of a change of circumstances relating to information set out in the application,

the applicant shall notify the change to the Authority forthwith after becoming aware of the change.

Procedure for determining application

4 (1) Subject to paragraph (2), the Authority shall determine an application for an innovative licence in accordance with the procedure set by administrative determination.

(2) The Authority may require an applicant to provide, within a time stipulated, further information necessary to determine the application.

(3) The Authority may, on an application under section 32A of the Act—

(a) grant an innovative licence with or without conditions; or

(b) refuse to grant an innovative licence.

Consultation

5 (1) Before making a decision on the application for an innovative licence, the Authority shall consult—

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

- (a) the Minister;
- (b) the Minister responsible for the environment;
- (c) the Minister responsible for planning;
- (d) the Minister responsible for parks;
- (e) the Minister responsible for public works;
- (f) the Minister responsible for marine and ports services; and
- (g) any other persons the Authority considers relevant.

(2) Within seven business days after the day on which the Authority receives the complete application, the Authority shall give each of the persons mentioned in paragraph (1) a copy of the complete application.

(3) Within 15 business days after the day on which the person receives a copy of the application from the Authority under paragraph (2), that person shall—

- (a) give a written notice to the Authority stating that, while the notice remains in force, the Authority shall not grant the licence;
- (b) make a submission to the Authority; or
- (c) give a written notice to the Authority stating that it does not require any further consultation about the application.

(4) The Authority shall not grant the licence while a notice is in force under paragraph (3)(a).

(5) Unless sooner revoked, a notice under paragraph (3)(a) remains in force during the period specified in the notice.

(6) The period specified under paragraph (5) shall not be longer than one month.

(7) A person who gives a notice under paragraph (3)(a) may, by written notice given to the Authority, extend, or further extend, the period referred to in paragraph (5), so long as the extension, or further extension, does not result in the notice under paragraph (3)(a) being in force for longer than three months.

(8) A person who gives a notice under paragraph (3)(a) may revoke the notice by giving the Authority a further written notice.

(9) Within two business days after the day on which the Authority receives a notice under paragraph (3)(a) or (7), the Authority shall give the applicant a copy of the notice.

(10) If a notice under paragraph (3)(a) is in force, the person who gave the notice may make a submission to the Authority.

(11) A submission to the Authority under paragraph (3)(b) or (10) may include—

- (a) recommendations about the conditions that should be specified in the licence; or

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

(b) such other matters (if any) as the Authority considers relevant.

(12) A notice under paragraph (3)(c) cannot be revoked.

(13) For the purposes of paragraph (2), the Authority receives the “complete application” when the Authority is satisfied that it has received the application in substantially complete form.

Consultancy deposit

6 (1) The Authority may, if it considers it desirable so to do, require an applicant for an innovative licence to provide a consultancy deposit in respect of the application for the licence.

(2) The Authority may, by order, specify the amount of the consultancy deposit which shall be provided by the applicant.

(3) The Authority may at any time, by order, require the applicant to increase the amount of the consultancy deposit given under this regulation to an amount sufficient to ensure the payment of the Authority’s consultancy costs actually expended for the purposes of assessing the applicant’s application.

(4) Any unused funds of the consultancy deposit shall be refunded to the applicant.

(5) In this section, “order” has the meaning given in section 2 of the Regulatory Authority Act 2011.

Criteria for grant of licence

7 (1) The Authority shall not grant an innovative licence unless the Authority is satisfied that the applicant—

(a) meets the criteria that are set forth in the Act and these Regulations; and

(b) will be able to use new or different technological or innovative measures—

(i) to further the purposes of section 6 of the Act;

(ii) to conform to the Grid Code; and

(iii) to comply with any relevant technical specifications that are approved by the Authority, including with respect to generation technology and means of interconnection with the grid.

(2) The Authority shall not grant an innovative licence to an applicant unless the Authority is satisfied that—

(a) every person who is, or is to be, a director, controller or senior executive of the applicant is a fit and proper person to perform the functions in relation to any activity carried on, or to be carried on, by it under the Act, having regard to the probity of the applicant and its officers; and

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

- (b) the applicant has sufficient financial resources for all purposes connected to the efficient operation of the innovative business and, in particular—
 - (i) to enable the applicant to provide the facilities, structures, equipment and personnel to operate and maintain the innovative business efficiently; and
 - (ii) to enable decommission and removal of the innovative licensee’s facilities, structures and other equipment at the end of the licence period.

Matters to which the Authority shall have regard

8 (1) In deciding whether to grant an innovative licence to an applicant, the Authority shall have regard to whether in the opinion of the Authority—

- (a) the applicant has satisfactorily demonstrated to the Authority that it is able to use new or different technological or innovative measures to carry on the proposed innovative business in the electricity sector;
- (b) the applicant has satisfactorily demonstrated to the Authority that it is able to use new or different technological or innovative measures to provide the proposed products or services the subject of the application, in the electricity sector;
- (c) the proposed innovative business is focused on developing new or improved approaches to the use or supply of, or demand for, electricity;
- (d) the proposed innovative business is likely to contribute to the achievement of the purposes set forth in section 6 of the Act;
- (e) the applicant is able to demonstrate a reasonable prospect of giving rise to improved services and outcomes for consumers of electricity;
- (f) the proposed business maintains adequate consumer protections, where relevant, including how risks (if any) might be mitigated;
- (g) the proposed business may impact on competition in any sector of the electricity market;
- (h) any other matters that the Authority considers relevant.

(2) For the avoidance of doubt, an innovative licence may be granted notwithstanding that it relates to technology that has not yet been demonstrated to be in commercial operation outside Bermuda.

Notice of proposed grant of licence

9 (1) Where the Authority proposes to grant an innovative licence to an applicant, the Authority shall publish in the Gazette and on its website a notice specifying—

- (a) the name of the applicant;

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

- (b) the proposed location of the area of land for the operation of the proposed innovative business; and
- (c) that a person who objects to the proposed grant of such a licence may object in writing to the Authority within seven days of the publication of the notice.

(2) For the avoidance of doubt, any notice issued or revised under this regulation is not a statutory instrument within the meaning of the Statutory Instruments Act 1977.

Objection to proposed grant of licence

10 (1) A person may object in writing to the Authority, within seven days of publication of a notice under regulation 9, to the proposed grant of an innovative licence on any of the grounds set forth in regulation 8 specifying the grounds therefor.

(2) The Authority shall consider any objection in relation to a particular application for a licence when deciding whether to grant a licence to an applicant.

Form and content of licence

11 (1) An innovative licence shall be in the form, and include the terms, as set by the Authority by administrative determination in respect of that class of licence.

(2) An innovative licence may contain other provisions not inconsistent with the terms in the administrative determination in respect of the class of licence.

Grant of licence

12 (1) Subject to paragraph (2), the Authority may, after—

- (a) receipt of an application for an innovative licence;
- (b) being satisfied that the applicant meets the criteria for grant thereof;
- (c) being satisfied that the grant is consistent with the purposes of the Act and any Ministerial directions regarding the structure of the electricity sector under section 8 of the Act;
- (d) payment of the prescribed fee by the applicant;
- (e) payment of the consultancy deposit;
- (f) where applicable, an Environmental Impact Assessment;
- (g) considering the application and any objections to the application,

grant to the applicant an innovative licence.

(2) The Authority shall specify in a licence granted by it—

- (a) the name of the licensee;
- (b) the period of time for which the licence is granted;
- (c) the location of the innovative business; and

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

(d) any conditions attached to the grant of the innovative licence.

(3) For the purposes of paragraph (1), section 48 of the Regulatory Authority Act 2011 applies and—

- (a) section 48(5) of the Regulatory Authority Act 2011 shall be construed as if “by general determination” in that section reads “by administrative determination”; and
- (b) section 48(8)(a) of that Act shall be construed as if “a general determination” reads “an administrative determination”.

Conditions

13 (1) Innovative licences granted under section 32A of the Act shall include as conditions that the innovative licensee—

- (a) conclude and maintain a risk management plan in such form determined by the Authority with respect to any operations related to such activities permitted by the licence as identified by the Authority;
- (b) shall, where the Authority so requires, cause to be carried out an independent environmental impact assessment in respect of its proposed innovative business;
- (c) may, where the Authority considers necessary, remove any of the licensee’s structures, or other equipment related to the innovative business, and the Authority shall require the licensee to do so at the end of the licence period;
- (d) provide regular updates to the Authority, as requested by the Authority; and
- (e) produce, as requested by the Authority, a report on the innovative experience in the electricity sector inclusive of technical documentation.

(2) The Authority shall cause the conduct of a public consultation of any environmental impact assessment of a proposed innovative business in such manner as the Authority may determine.

Refusal of licence

14 (1) The Authority may refuse to grant an innovative licence on either of the following grounds—

- (a) the application is incomplete, and any time accorded to the applicant for completing the application has expired; or
- (b) the criteria for approval are not satisfied in the opinion of the Authority.

(2) An application is incomplete if it does not contain the information and documents required under regulation 3(2) or further information required by the Authority under regulation 4(2).

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

(3) If an application is refused under paragraph (1), the Authority shall inform the applicant in writing.

(4) In the case of refusal on the ground in paragraph (1)(b), the Authority shall, before refusing the application, give the applicant an opportunity to make representations regarding the proposed refusal and shall take the representations into account.

Term of innovative licence

15 (1) An innovative licence may be granted for the term stated in the licence which term shall not exceed seven years beginning from the day when the innovative business becomes operational.

(2) Before the expiration of the period referred to in paragraph (1), an innovative licence may be extended for such further period, not exceeding five years, as may be specified in the extension; provided that, only one extension may be granted to an innovative licensee.

(3) Unless provision to the contrary is made in the licence, an innovative licence may be extended.

Suspension or revocation of innovative licences

16 (1) An innovative licence may be suspended in whole or in part on the basis that the licence holder is in breach of its obligations under the licence and the breach is such that suspension is justified and—

- (a) the suspension is confirmed on appeal under section 33 of the Act; or
- (b) the time limited by law for filing a notice of appeal has expired and the licensee has not filed a notice of appeal.

(2) An innovative licence may be revoked by the Authority on the basis that the licence holder is in breach of its obligations under the licence and the breach is such that revocation is justified—

- (a) upon the expiration of the term, without renewal;
- (b) where the revocation is confirmed on appeal under section 33 of the Act; or
- (c) where the time limited by law for filing a notice of appeal has expired and the licensee has not filed a notice of appeal.

(3) With respect to the suspension or revocation of an innovative licence under these Regulations, regulations 17 to 19 shall apply.

Warning notices

17 (1) Where the Authority proposes to suspend or revoke a licence, the Authority shall issue a warning notice.

(2) A warning notice must—

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

- (a) state the measure (whether to suspend or revoke the licence) which the Authority proposes to impose or take;
- (b) be in writing; and
- (c) give reasons for the measure to be imposed or taken.

(3) The warning notice must specify a reasonable period (which may not be less than 28 days) within which the person to whom it is given may make representations to the Authority.

(4) Where representations are made under paragraph (3) to the Authority, the Authority shall take them into account in deciding whether to give a decision notice.

(5) The Authority may extend the period specified in the notice.

Decision notices

18 (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Authority’s decision to impose the measure to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the Supreme Court.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under regulation 17 was given; and if no decision notice under paragraph (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under regulation 19.

(3) A decision notice on the imposition of a penalty must state the date of payment.

(4) A decision notice shall state the day on which it is to take effect.

Notices of discontinuance

19 (1) If the Authority decides not to impose a penalty or other measure proposed in a warning notice, the Authority must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the default alleged to have been committed and the penalty or other measure which is being discontinued.

Transfer of licence

20 (1) An innovative licence shall not be transferred or assigned without the prior consent of the Authority.

(2) Transfer includes change in control of the licensee, where “control” refers to—

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

- (a) the power, whether held directly or indirectly, to exercise decisive influence over a licence holder, including by directing its management and policies, whether through ownership of shares, stocks, or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; or
 - (b) the ownership of 25 percent or more of the shares, stocks, or other securities or voting rights, including through an agreement or arrangement of any type.
- (3) The Authority shall determine whether to give consent under paragraph (1) as if the transferee were an applicant for the licence.
- (4) The Authority shall have due regard to the purposes set forth in section 6 of the Act when making its decision as to whether or not to give consent.
- (5) If the Authority intends to give consent under paragraph (1) to the transfer or assignment of an innovative licensee, the Authority shall first consult the Minister and obtain his approval.
- (6) The Minister may refuse to give his approval under paragraph (5), but only if he is satisfied that the Authority's intended consent to the transfer or assignment is not in accordance with any Ministerial directions issued pursuant to sections 8 and 9 of the Act.

PART 3

INNOVATION ZONES AND PROTECTION ZONES

Authority may make recommendations regarding innovation zones

- 21 (1) Subject to paragraph (2), the Authority may make recommendations to the Minister about the designation of an area of land for the operation of an innovative business (hereinafter "protection zone").
- (2) Recommendations to the Minister under paragraph (1) shall be in the Authority's discretion.
- (3) The Minister shall not be bound by a recommendation made by the Authority under paragraph (1).

Protection zones

- 22 (1) Schedule 1 (Protection Zones) shall have effect in respect of innovative areas to be designated for persons to whom an innovative licence has been granted.
- (2) The Minister may make regulations amending Schedule 1.
- (3) Regulations made under paragraph (2) may—
- (a) designate one, or more than one, other area of land within Bermuda to be a protection zone for the purposes of the Act; or

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

(b) adjust the boundaries of any protection zone.

(4) Subject to paragraph (5), the Authority may make recommendations to the Minister about the designation of a protection zone under this regulation.

(5) The Minister shall not be bound by a recommendation made by the Authority under paragraph (4).

Prohibited and restricted activities

23 (1) Schedule 2 (Prohibited and Restricted Activities) has effect with regard to prohibited and restricted activities in protected zones.

(2) The Minister may make regulations amending Schedule 2 by adding to, deleting from, or otherwise modifying—

(a) the list of prohibited activities in paragraph 1 thereof;

(b) the list of restricted activities (and the corresponding restrictions imposed on each activity) in paragraph 2 thereof.

Consultation with Minister responsible for environment

24 The Minister, where he is not also the Minister responsible for the environment and the Minister responsible for planning (if different)—

(a) shall not make regulations under regulation 22 or 23 amending Schedule 1 or 2, respectively, unless he has first consulted with the Minister responsible for the environment and the Minister responsible for planning in relation to a proposal to do so; and

(b) shall have regard to any advice or recommendations provided by the Minister responsible for the environment and the Minister responsible for planning in relation to the proposal.

PART 4

OFFENCES

Damaging equipment

25 (1) A person commits an offence if—

(a) the person engages in conduct;

(b) the conduct results in damage to the equipment of an innovative licensee in any protected zone; and

(c) the equipment is in a protection zone.

(2) It shall be a defence for a person charged with an offence under paragraph (1) to prove that—

(a) the conduct that resulted in the damage was necessary to save a life or a vessel;

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

- (b) the conduct that resulted in the damage was necessary to prevent pollution;
- (c) the person took all reasonable steps to avoid causing the damage;
- (d) the person is the innovative licensee who owns or operates the damaged structure or equipment; or
- (e) when the conduct occurred, the person was acting on behalf of the innovative licensee who owns or operates the damaged equipment.

Damaging equipment: offence by master or owner of vessel

- 26 (1) A person (the first person) commits an offence if—
- (a) the first person is the owner or master of a vessel;
 - (b) the first person permits another person to use the vessel;
 - (c) the other person commits an offence against regulation 25; and
 - (d) the vessel is used in the commission of the offence and the first person is reckless as to that fact.
- (2) It shall be a defence for the first person to prove that the other person has, or would have, a defence under regulation 27.

Engaging in prohibited or restricted activities; defences

- 27 (1) A person commits an offence if—
- (a) the person engages in conduct;
 - (b) the conduct occurs in a protection zone; and
 - (c) the conduct—
 - (i) is prohibited in the protection zone; or
 - (ii) contravenes a restriction imposed on an activity in the protection zone.
- (2) A person commits an offence under this paragraph if—
- (a) the person engages in conduct;
 - (b) the conduct occurs in a protection zone;
 - (c) the conduct—
 - (i) is prohibited in the protection zone; or
 - (ii) contravenes a restriction imposed on an activity in the protection zone; and
 - (d) the person engages in the conduct with the intention of making a commercial gain.

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

(3) It shall be a defence for a person charged with an offence under paragraph (1) or (2) to prove that—

- (a) the conduct was necessary to save a life or vessel;
- (b) the conduct was necessary to prevent damage to other land or property;
- (c) the conduct was necessary to prevent pollution; or
- (d) the person took all reasonable steps to avoid engaging in the conduct.

Penalty

28 (1) A person who commits an offence under regulation 25, 26 or 27 (if the other person referred to in regulation 26(1)(c) commits an offence under regulation 25), as the case may be, shall be liable—

- (a) on summary conviction to a fine not exceeding \$25,000 or imprisonment for two years or to both; and
- (b) on conviction on indictment to a fine not exceeding \$50,000 or imprisonment for five years or to both.

(2) In the case of either paragraph (1)(a) or (b), in the event of a continuing offence, the Court may impose a further fine of \$5,000 for every day during which the offence continues.

(3) Where any person is convicted of an offence under this regulation the court, where it is proved to its satisfaction that the contravention includes the illegal operation or possession of any apparatus or other equipment, may order the confiscation of the apparatus or other equipment.

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

SCHEDULE 1

(regulations 2 and 22)

PROTECTION ZONES

Protection zone map and coordinates

1 (1) The protection zone is the area within the boundary outlined on the following map or maps, that shall be set forth below, showing the area of land within which an innovative licensee may carry on its innovative business.

(2) The coordinates for the identifier numbers on the map or maps set forth in subparagraph (1) shall be set forth below.

Copies of protection zone map

2 Copies of any protection zone map can also be found for inspection at—

- (a) the Regulatory Authority—
 - (i) website at: <https://ra.bm/>;
 - (ii) office: lobby, situated at 8 Wesley St, Hamilton, HM 11, Bermuda;
- (b) the Department of Environment and Natural Resources—
 - (i) website at: https://environment.bm;
 - (ii) office: lobby, situated at Botanical Gardens, 169 South Road, Paget, DV04, Bermuda.

ELECTRICITY (INNOVATIVE LICENCE) REGULATIONS 2023

SCHEDULE 2

(regulations 2 and 23)

PROHIBITED AND RESTRICTED ACTIVITIES

Prohibited activities

1 Subject to paragraph 3, in a protection zone, the activities that shall be set forth below in the following subparagraphs in respect of an innovative licensee are prohibited (“prohibited activities”).

Restricted activities

2 Subject to paragraph 3, in a protection zone, the corresponding restrictions apply to the activities listed below (“restricted activities”).

Paragraphs 1 and 2 do not cover activity if carried on in certain circumstances

3 Paragraphs 1 and 2 do not cover an activity if the activity—

- (a) is carried on by, or on behalf of, a person who owns or operates the innovative business in the protection zone; and
- (b) consists of the innovative licensee’s maintenance or repair of its structure or equipment.

Made this 9th day of May 2023

Minister of Home Affairs

[Operative Date: 09 May 2023]