

Explanatory notes to the proposal for a Home Rule Parliament Act on the exploitation of ice and water for exportation (the Ice and Water Exportation Act).

General notes

1. Introductory notes

In recent years, there has been increasing interest in exploitation of ice and water from Greenland for exportation. The number of enquires to the Home Rule has been increasing rapidly, and the serious intentions behind the enquiries also seem to be on the rise.

Greenland Ice Cap Production Aps has the leading position and has initiated production and exportation of drink ice from Narsaq. At the end of 1999, the company's products were introduced to several new markets in Scandinavia and Europe by serious importers and distributors, and they are expected to show good growth potential. The company's products will contribute to increasing international awareness of clean ice and clean water from Greenland.

On the other side of the Davis Strait, the Canadian company Iceberg Industries Corporation has, in recent years, built up a production and a market for drinking water, beer and vodka based on exploitation of ice from icebergs in the Newfoundland area. The company's products are being sold in North America and are currently being introduced to the European markets. The establishment and the growth of the company is a good illustration of the considerable opportunities existing in the ice and water exportation area, when all links in the chain from production to marketing and sales are managed professionally.

Compared with the interest seen today, the expectations are that the coming years will show a significantly increased interest in producing and exporting ice and water from Greenland, and that, in the longer term, this could result in undertakings in this area of entirely different dimensions than we can envision today. This should also be seen in connection with the fact that clean water is expected to become a scarce resource within a number of years for some countries to a much higher extent than today.

In this situation, it seems that with a view to the development of this new business area which is potentially important in the long term there is a need for legislation that provides an up-to-date basis for such activities. New legislation is thus needed to ensure society's interests in connection with such activities and to enable society to offer terms that can make such projects financially attractive to investors.

As part of this, there seems to be a considerable need to maintain and improve the commercial value of the Greenland ice and water resources through ongoing quality assurance of the products that are marketed internationally, and this should also be included in new legislation.

Because of the parallels existing between exploitation of ice and water and other mineral resources activities, the understanding is that it will be most appropriate

for new legislation within the ice and water area to be based on a licence system corresponding to the one that has been used for many years for mineral resources.

The Proposal only pertains to exploitation of ice and water for the purpose of exportation and does not pertain to exploitation of ice and water with a view to supplies for consumption in Greenland which, as before, will have to be carried out in accordance with the "bekendtgørelse om beskyttelse af ferskvandsressourcer og indvinding af ferskvand til drikkevand" (executive order no. 9 of 15 April 1993 on the protection of fresh water resources and abstraction of fresh water for drinking water).

2. Background for the Proposal

The background for the Proposal is that the world's need for clean water has been increasing rapidly and that this growth is expected to continue. This is illustrated by a study mentioned in a recently published UN report "Global Environment Outlook 2000" where 200 international researchers (in 50 countries) were asked to prioritise global environmental problems. In this study, the four environmental problems with highest priority are:

1. Climate change	51%
2. Lack of fresh water	29%
3. Deforestation/desertification	28%
4. Contamination of fresh water	28%

It is therefore remarkable that quantity and quality problems related to fresh water come 2nd and 4th on this list and, if they had not been divided, would have come 1st together.

This prioritisation is not surprising. Clean water is a scarce resource in many countries, and in many places the normal water supply is largely supplemented by drinking water from bottles or other plastic containers, either because there is not enough confidence that the normal water supply is sufficiently clean or because the water does not taste good. Water cleaning will often also remove the flavours of the water. In a number of countries, the sale of water in bottles or other plastic containers has therefore been increasing rapidly in the past 10-20 years.

It is expected that this development will continue in the coming years and that this will enable sales of clean water from Greenland on international markets. As general wealth increases, it is expected to become more and more normal to consume water in different qualities and that part of the purchasing power is used to consume water of a higher quality than the normal water supply.

Marketing possibilities for ice and water from Greenland, however, are not limited to water in bottles or other plastic containers. In the longer term, marketing possibilities are thus expected to include the following product categories which will require individual production and marketing development:

- water filled in bottles, other plastic containers, or cans in Greenland and ice treated and packaged in Greenland, directed towards international beverage markets (consumer products);

- water in large volumes, shipped as bulk goods to e.g. the United Arab Emirates with a view to use as drinking water or irrigation (industrial products);
- ice and water to be used as raw materials in e.g. perfume, electronics and beverage industries (special products).

In all these instances, it will be essential that the water is pure, not just at the time of shipment, but also when the products reach the recipients, and that the recipients cannot question the purity.

3. Current legal basis

Under current legislation, exploitation and exportation of ice and water normally require 3-4 licences from the Home Rule:

- a. One licence for abstraction of fresh water in accordance with the "bekendtgørelse om beskyttelse af ferskvandsressourcer og indvinding af ferskvand til drikkevand" (executive order no. 9 of 15 April 1993 on the protection of fresh water resources and abstraction of fresh water for drinking water). This Executive Order is managed by the Department for Environment and Nature.
- b. One exportation licence in accordance with the "bekendtgørelse om eksporttilladelser" (executive order no. 33 of 19 December 1985 on exportation licences). In relation to exportation of ice and water, this Executive Order is managed by the Bureau of Minerals and Petroleum.
- c. One licence for land use in accordance with the "landstingsforordning om arealanvendelse og planlægning" (order of the Home Rule Parliament no. 6 of 19 December 1986 on land use and planning) with subsequent amendments. This legislation is managed by the Ministry of Housing and Infrastructure and licences are granted by the Ministry and the municipal council.
- d. One licence in accordance with the "bekendtgørelse om levnedsmiddelvirksomheder" (executive order no. 21 of 27 July 1998 on food processing companies). This Executive Order is managed by the Department for Environment and Nature.

4. Proposal for new legislation

As mentioned, it is assessed that new legislation in this area should preferably be based on a licence system corresponding to the system for the mineral resources area, cf. the Act on Mineral Resources in Greenland (the Mineral Resources Act). This is due to obvious parallels between the exploitation of ice and water and other activities involving exploitation of resources where both instances involve long-term work requiring considerable venture capital and a high degree of professionalism in all aspects of the activities.

In the ice and water area, the challenge will thus be to develop a marketable product, to produce it at an acceptable price, and to market the product professionally in relevant markets, mainly in North America and Europe, in keen competition with a large number of other, similar products available to consumers. As is true for mineral resources, it is thus necessary to attract

international investors which can contribute with capital, expertise and international distribution contacts, if ice and water on a large scale are to be developed into a significant business sector.

As for the mineral resources area, there is thus a need to draw up licences in such a manner that society's interests in connection with such activities are protected and so that it is possible to offer licence terms to investors that make such projects financially attractive.

Currently there is no detailed knowledge of the licence terms necessary to attract investors to this type of activity. Such knowledge will thus have to be built gradually on the basis of discussions and negotiations with interested investors. At the same time, it must be possible to develop the terms dynamically over time as changed market and cost conditions etc. make ice and water exploitation in Greenland more or less attractive commercially.

As for the Mineral Resources Act, the Proposal has thus been prepared as a legislative framework. The background for this is, as mentioned, that considerable developments are expected within exportation of ice and water in the coming years, probably both technically and commercially, and considerable societal developments must also be expected to continue. There is thus a need for ongoing adjustments of the interplay between activities within the ice and water area and society. In addition, it will not be possible to regulate all matters in an Act.

The proposed legislative framework allows the possibility to draw up licences which, within the framework of the Act, will be open for much more detailed provisions and which will facilitate adaptations to special or changed conditions. The specific licences will thus have to be drawn up, negotiated and granted within the framework of the Act and will thus contain licence terms adapted to the specific project as well as the time the licence is granted. In this connection, model licences will be drawn up to form the basis for discussions with potential investors and for subsequent discussions with applicants.

In relation to the Mineral Resources Act, however, the Proposal contains a number of modifications, taking into account the special type of activity exploitation and exportation of ice and water are expected to involve. It is thus not all matters within the mineral resources area that are relevant in relation to ice and water exportation. An example is the societal goal of preserving and protecting the commercial value of the Greenlandic ice and water resources through measures ensuring that quality considerations are taken in all situations.

Exploitation of ice and water is not covered by the Mineral Resources Act and the agreements between the Home Rule and the Government for the mineral resources area.

5. Processing by the authorities

With a view to ensuring that applications are processed in a speedy, flexible and coordinated manner, the plan is to organise processing by the authorities of ice and water activities according to the "one door" principle. The "one door" principle entails that applicants only need to contact one authority, which will then coordinate the overall processing by the authorities of the desired activities.

When the coordinating administrative authority has received an application, this authority must ensure that all other relevant authorities receive the case for processing according to the set of regulations applicable to the relevant administrative area. Decisions made by the other relevant authorities will be submitted to the coordinating administrative authority for further processing. Applicants for licences or approvals under this Proposal will subsequently only receive replies from the coordinating administrative authority.

Applications for exploitation of ice or water for exportation will typically require land allotment as well as veterinary and environmental approvals. The coordinating administrative authority will then have to ensure that the responsible authorities as regards land allotment as well as veterinary and environmental requirements receive, process and make decisions. The coordinating administrative authority will then reply to the relevant applicant. With the current division of responsibilities between the authorities, such an application would involve the relevant municipality, the Department for Environment and Nature as well as the Ministry of Housing and Infrastructure.

Coordinated processing by the authorities could include issuing regulations, supervision, monitoring, reporting and approval procedures. The approval procedures will include general approvals in principle of joint specific plans for exploitation activities as well as detailed approvals of individual parts of the activities in cooperation with the other relevant administrations and municipalities.

Supervision of the activities is carried out partly through on-site inspection visits and partly through the reporting about the activities that licensees are required to submit on an ongoing basis to the coordinating administrative authority.

The intention is to seek to establish agreements with Danish authorities or organisations within areas where Greenland does not have sufficient expertise, and where the initial intention is not to seek to develop such expertise. An example is institutions in the Ministry of Environment and Energy, including the National Environmental Research Institute of Denmark and the Geological Survey of Denmark and Greenland (GEUS) which, for a number of years, have carried out glaciological and hydrological studies in Greenland and which have considerable professional knowledge relevant to the ice and water exportation area. There is thus already considerable cooperation between the Bureau of Minerals and Petroleum and the institutions in the Ministry of Environment and Energy as regards the mineral resources area.

The tasks of the coordinating administrative authority will also include representing the licensing authority in relation to applicants and licensees and preparing draft strategies and policies within the area, effecting promotion in relation to potential investors, negotiating with applicants about licence terms etc., and processing cases as regards licence terms.

The tasks of the coordinating administrative authority will also include matters regarding accounting and finance in relation to the activities of licensees.

6. Quality matters

As mentioned, exportation of ice and water on a large scale will require extensive and professional marketing where there will be fierce competition from

other similar products. The most significant competitive advantage for ice and water from Greenland will undoubtedly be the purity of the products, while costs will probably impact competitiveness negatively to a significant extent. It is thus crucial for the development of this type of activity that the products are in fact pure, not just at the time of shipment, but also when the products reach the recipients and that the recipients cannot question the purity. At the same time, the purity of the products must be assessed in relation to the high European and North American drinking water and food standards.

The commercial value of the Greenlandic ice and water resources is thus – as for fish products – essentially based on maintaining and enhancing consumers' perception of the purity of these products.

At the same time, it is of great importance to a licensee that has invested great resources in marketing and distribution of ice and water products from Greenland that the value of these investments is not impaired by another licensee which, by mistake or on the basis of short-termism, markets products that do not meet the quality requirements, and consequently adversely affects the general reputation of Greenlandic products.

Authorities and licensees thus have a common interest in ongoing quality assurance of the ice and water products being exported and marketed.

As a consequence of this, the Proposal contains a number of provisions about quality matters, cf. section 8(2) and sections 12 and 21. These provisions are expected to be considerably extended in the specific licences.

7. Participation by the Home Rule in activities within the area

As mentioned, the Proposal will form a basis for the specific construction of the detailed terms for preliminary investigation licences and particularly exploration licences through negotiations with applicants. As regards exploitation licences, financial terms will be of special interest. Such financial terms could include different kinds of tax, participation by a company owned by the Home Rule in the licence and thus in the activities that form the basis of the licence.

The possibility of setting terms for such participation by the Home Rule is stipulated in section 26(2) of the Proposal.

Moreover, section 22 of the Proposal stipulates that the Government of Greenland will decide in individual situations which company is to take care of this participation by the Home Rule.

8. Consultation with public authorities and organisations etc.

The Department for Environment and Nature, the Ministry of Housing and Infrastructure, the Department of Industry, the Ministry of Culture, Education, Research and The Church, the Department of Taxation, the Ministry of Finance and KANUKOKA (the Greenlandic association of municipalities) have been consulted regarding the Proposal.

The Proposal has also been in legislative review at the Legal Affairs Office at the Secretariat to the Government of Greenland.

To the extent necessary, the consultative comments have been incorporated into the Proposal.

9. Economic and administrative consequences of the Proposal

Naturally, it is difficult to assess in advance the scope of the interest in the initial period after entry into force of the Act amongst investors to obtain licences for ice and water exploitation with a view to exportation. However, a certain amount of interest in this potential must be expected.

In the initial phase, processing by the authorities will take place using the current manpower, and no application has been sent for further funding for 2001.

Depending on how the ice and water exportation area develops, a need may arise for transfer of funds for processing by the authorities and other tasks within the area.

Explanatory notes to the individual provisions in the Proposal

Re section 1

This provision contains a delimitation of the scope of the Act so that it only covers exploitation of ice and water for exportation.

Subsection (2) stipulates that the Act covers the sea three nautical miles off the shore, which means the Greenlandic territorial sea comprising the internal waters on the landward side of the baseline of the territorial sea and the waters toward the outer limit of the territorial sea. The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea. Within the Greenlandic territorial sea, the Home Rule may regulate the activities covered by the Act.

Subsection (3) stipulates that the Act does not cover the exploitation of ice and water with a view to supplies for consumption in Greenland or the use of ice and water resources for hydroelectric power, and that the Act does not cover exploration in connection with such activities either. These activities are thus regulated as before in accordance with current legislation.

Re section 2

This provision stipulates that exploitation of ice and water for exportation and field exploration in connection with this are exclusively to be carried out pursuant to licences granted under the Act. The Act thus lays down regulations as to how authorities may act within the ice and water exportation area as regards granting licences for preliminary investigations (part 2) and exploitation (part 3) and as to regulation of such activities by authorities.

Subsection (2) stipulates that the Danish State and the Government of Greenland [the Home Rule], as hitherto, may undertake scientific and practical studies of a general nature or with the purpose of producing maps and surveys

of hydrological and glaciological conditions. Such studies, which are mainly carried out by the Geological Survey of Denmark and Greenland (GEUS) and the undertakings owned by the Home Rule, Asiaq og Nukissiorfiit, may, as before, be carried out without having been granted a licence under the Act.

Similar provisions are included in the Mineral Resources Act.

Re section 3

This provision stipulates that the Government of Greenland may issue a licence to carry out preliminary investigation regarding the exploitation of ice and water for exportation.

Preliminary investigations typically cover preparatory, exploring studies of limited scope. The purpose of such preliminary investigations will normally be to form a basis for a licensee's preliminary assessments of the possibilities for initiating exploitation activities and of the suitability of different geographical areas for this purpose.

A licence to carry out preliminary investigations (under section 3) is granted for a specified geographical area, but since the licence does not grant the licensee exclusive rights to the relevant area, the size of the geographical area covered by the licence will be of minor importance. The area of the licence may thus be quite big. The area covered by a licence to carry out preliminary investigations will be reduced if an exploitation licence which contains exclusive rights is issued for part of the area at a later time, and the relevant exploitation area will then be excluded from the area covered by the licence to carry out preliminary investigations.

A licence to carry out preliminary investigations is granted on the basis of more detailed conditions. The intention is to prepare standard terms for such licences.

As mentioned, a licence to carry out preliminary investigations does not grant exclusive rights to the licensee and does not prevent a similar licence for more or less the same area from being granted to other parties. Similarly, granting such a licence to carry out preliminary investigations does not include a promise to the licensee that it will later be able to obtain a right or priority for an exploitation licence (under section 4) within the relevant area.

As a consequence of the fact that a licence to carry out preliminary investigations does not include exclusive rights for the licensee, the extent of studies under such a licence will be limited. Thus, there will normally be no obligations for the licensee to carry out specific exploration activities.

Subsection (2) stipulates that a licence to carry out preliminary investigations may be granted for a period of up to five years. At the end of each period, a new licence to carry out preliminary investigations may be granted upon application.

Similar provisions are included in the Mineral Resources Act.

Re section 4

This provision stipulates that the Government of Greenland may issue a licence for exploitation of ice and water for exportation. Such an exploitation licence may be issued separately for ice and water respectively.

An exploitation licence is granted for a specified geographical area. For land areas, such a licence will be granted with exclusive rights, whereas exploitation licences for sea areas will normally be granted without exclusive rights.

For land areas, an exploitation licence will thus entail exclusive rights for the licensee for the geographic area involved. The size of the area covered by the licence should thus be determined so that it, on the one hand, gives the licensee access and exclusive rights to the ice and water resources necessary to carry out the relevant activities, but on the other hand, the size of the area should not unnecessarily prevent other similar activities from being established in other areas, even though this would involve establishment of competing enterprises. As a main rule, an exploitation licence will thus primarily have to cover the geographical area that holds the ice and water resources intended to be exploited as well as those parts of the adjacent areas necessary to protect the quality of the ice and water resources intended to be exploited.

For sea areas, an exploitation licence will, however, normally not entail exclusive rights for the licensee for the geographical area involved, because those ice resources in the form of icebergs that such exploitation would be aimed at are not stationary in the same way as land areas. However, in some situations there may be matters that justify granting exclusive rights for a specified sea area and then the same considerations as for land areas will apply. Exclusive rights for a specified sea area could, for example, be relevant for exploitation of a floating glacier tongue.

When processing an application for an exploitation licence, the Government of Greenland has a free rein to decide whether it will grant such a licence or not and, if relevant, the terms to be attached to the licence. Thus, the applicant cannot demand such a licence, and the licensee cannot demand that a licence be granted on terms equal to the terms of other previous licences.

An exploitation licence requires that the licensee carry out exploitation activities – or alternatively relevant exploration work aimed at establishing such exploitation activities, cf. section 11 - and an exploitation licence will thus include terms stipulating that the licence will be cancelled, if the licensee has not, within a reasonable time limit, established commercial exploitation in the area. This time limit is proposed to be set at a maximum of five years.

The period mentioned in subsection (2) where the licensee has been granted exclusive rights for an area in order to examine the opportunities for establishing commercial exploitation activities corresponds to an exploration licence for the mineral resources area. As the investigation phase within the ice and water exportation area is expected to be short-term, it has not been deemed necessary to draw up a separate exploration licence for this period.

Depending on the size of the area covered by the exploitation licence, the need may arise for inserting terms into the licence stipulating that the area of the licence will be reduced during the period mentioned in subsection (2).

Subsection (1) stipulates that a licensee holding an exploitation licence is required, as a main rule, to meet the following conditions:

- a) the licensee must be a private limited company or a joint stock company domiciled in Greenland,
- b) the licensee must only carry out activities according to licences under the Act, and
- c) the licensee must not be subject to joint taxation with other companies.

The provision in subsection (2) stipulates that the licensee must have the qualifications and the capital necessary to be able to carry out the planned activities. This is a precondition for being able to operate the company appropriately and to achieve a healthy and viable company which is not going to cease activities after a short period of time with consequential losses for both the company and society.

It is not necessary for the licensee itself to possess all the required qualifications. Some may be obtained through consultancy assistance or through establishment of cooperation agreements with other companies, but then it will be necessary for the licensee to have the required capital basis to ensure that these qualifications are available to the company to the extent necessary.

Within the period mentioned in section 11 when no exploitation activities have been initiated, the above considerations are not essential and may thus be derogated from in this period, cf. section 5(3).

Re section 6

This provision stipulates that exclusive rights for a geographical area, cf. section 4, do not prevent the Government of Greenland from, at any time within this area, granting a licence to other parties for exploitation of ice and water with a view to supply for consumption in inhabited areas. Such granting of an exploitation licence for consumption in Greenland – within an area covered by exclusive rights under section 4 – may be effected without any compensation becoming due to the licensee. In some situations, this may entail a relatively invasive measure in respect of a licensee and should thus only be applied if the Government of Greenland finds that there are convincing reasons for this. In other situations, the ice and water resources within the relevant licence area will be so extensive that there is plenty of water for both the activities of the licensee and for consumption in inhabited areas.

Re section 7

This provision stipulates that an exploitation licence may be granted for a period of no more than 30 years at a time. The licence period should be set taking into consideration the expected duration of the relevant activities, and taking into consideration the interest of the licensee to have the licence terms set for a longer period of time as well as the interest of the authorities for this period not to be so long that it prevents an reasonable extent of ongoing adaptation of the licence terms to the actual current international market conditions for ice and water.

As mentioned in the general notes, considerable developments are underway for the ice and water area, and it will thus be appropriate to ensure that the licence terms may be developed dynamically as changed market and cost conditions etc. make ice and water exploitation in Greenland more or less financially attractive.

Subsection (2) stipulates that an exploitation licence may be prolonged when it expires. This requires that the licensee submit an application in this respect before expiry of the licence and that the licensee has generally complied with the licence terms hitherto in force. When considering an application for prolongation of an exploitation licence, the Government of Greenland has a free rein to decide whether it will grant such a prolongation or not and, if relevant, the terms to be attached to the prolongation. Thus, the licensee cannot demand such a prolongation, and the licensee cannot demand that a prolongation be granted on unchanged terms or terms that are no more burdensome for the licensee than the licence terms hitherto in force.

A prolongation under subsection (2) may not be granted for a period longer than 30 years, cf. subsection (1).

Subsections (1)-(2) relate to normal exploitation activities. In the event of breach of the terms of the licence, the licence may be cancelled in accordance with the provisions regarding forfeiture and withdrawal, cf. section 15. Please refer to section 10 as regards temporary discontinuation of exploitation activities.

Similar provisions are included in the Mineral Resources Act.

Re section 8

This provision stipulates that before exploitation can be commenced and the relevant facilities established, a plan for the total exploitation activities (exploitation plan) must be submitted for approval by the authorities.

On approval it must be ensured that the planned activities be carried out in a prudent manner, e.g. as regards technical, safety, environment and quality aspects. If, at the time when the exploitation plan is approved, there are no details about the individual parts of the activities, the overall approval under section 8 may be made conditional upon these parts of the activities obtaining later approval.

At the time when an exploitation plan is submitted to the authorities for approval, an exploitation licence will normally have been issued first (under section 4). Approval of the exploitation plan may, in such situations, only be rejected if such rejection is based on specified objective considerations, typically safety, environmental and quality aspects. For example, the material submitted by the licensee regarding the planned exploitation activities may be insufficient or involve such doubts about the planned activities that the authorities believe it to be necessary to carry out further investigations or assessments in order to obtain sufficient basis for the authorities' decision regarding the exploitation plan.

The processing by the authorities in connection with approvals pursuant to section 8 will be pivotal to the authorities' possibility of assessing the consequences of the planned exploitation activities. Therefore, it is necessary for the licensee to procure a basis for an overall assessment of the activities, including an environmental impact assessment.

In connection with submission of the exploitation plan, the plan for termination of activity mentioned in section 9 must be submitted with a view to overall processing of these plans.

Subsection (2) stipulates that the exploitation plan must contain information and documentation about the quality the company's products will have when they are sold to the recipients and about the quality assurance the company intends to carry out internally as well as externally. Please refer to paragraph 6 of the general notes.

Re section 9

The provision only applies for exploitation activities and provides the basis for observing in particular environment and safety considerations on termination of such activities and in the period following termination.

Subsection (1) thus stipulates that in connection with an application for the approval of an exploitation plan pursuant to section 8 a plan for termination of the activities must be prepared and submitted for approval by the authorities.

Subsection (2) stipulates that the plan for termination of activities must contain information as to how an appropriate financial basis for the execution of the plan can be ensured. In this connection, reference is made section 12(2) as regards possible collateralisation. The plan for termination of activities must be approved by the Government of Greenland.

Subsection (3) contains regulations stipulating that the plan for termination of activities must be kept up to date on an ongoing basis and that changes to the plan must be approved by the Government of Greenland.

The provisions in sections 8-9 reflect a trend of growing awareness of the need to be able to take account of environment and safety considerations when activities exploiting resources are terminated. The planning of this, which already begins at the time activities are commenced, is an important precondition for much later application of the necessary measures on termination in an appropriate manner, also financially.

Similar provisions are included in the Mineral Resources Act.

Re section 10

This provision reflects the fact that – primarily because of varying price and sales conditions for the products – there may be periods when continued exploitation will be onerous, but where there is a possibility that these conditions may change so that it is not desirable to definitively terminate the activities.

Subsection (1) stipulates that a temporary discontinuation of exploitation activities must be approved by the Government of Greenland. The intention of this is to ensure that the circumstances of the activities, e.g. as regards the environment, safety and maintenance, are maintained as much as possible in the period when the activities are "in mothballs" and that the possibilities of execution of the plan for termination of activities are not significantly impaired. The latter is important if it is later ascertained that the activities cannot be resumed, which is hardly unrealistic.

Subsection (2) stipulates that the Government of Greenland in special situations may order the plan for termination of activities to be executed. This may be done if the temporary discontinuation has lasted three years or if the terms of the temporary discontinuation are not being met.

Similar provisions are included in the Mineral Resources Act.

Re section 11

This provision stipulates that terms may be included in an exploitation licence that the licensee is not required to carry out exploitation or establish facilities etc. with a view to exploitation within the first part of the licence period, but is only required to carry out investigation of the possibilities of establishing exploitation activities and circumstances in this connection.

In such a period, the licensee may thus carry out the necessary detailed investigations of feasibility-oriented matters pertaining to establishment of exploitation activities in the area as well as investigations of other sales and costs aspects of exploitation activities. In this period, the licensee will have exclusive rights to the relevant area and can thus rely on having the necessary exploitation licence if the investigations result in the licensee assessing that there is a basis for commencing commercial exploitation. At the same time, the licensee will know the detailed terms of the exploitation licence, which can then be included in the basis for the investigations.

As mentioned, issue of an exploitation licence requires that the licensee carries out an exploration or, alternatively, carries out relevant investigation work aimed at establishing such exploitation activities. This provision thus requires that the investigations to be carried out in a period set pursuant to section 11 are specified to a reasonable extent and are subsequently reported to the relevant ministry or department, cf. also section 18(2).

Moreover, the intention is that the period under section 11 is not to be longer than the period which can reasonably be expected to pass for the investigations mentioned and the licensee's subsequent assessments on the basis of the results as regards commencement of commercial exploitation. The period under section 11 may not exceed the period of five years mentioned in section 4(2).

Re section 12

Subsection (1) stipulates that a number of terms may be stipulated for the performance of the activities, particularly as regards technical aspects, safety, environment, land-use, resources and quality. In addition, there may be terms e.g. about the period in which the approval applies, reporting about specific

matters, and monitoring matters related to the environment or health. Such monitoring may either be carried out by the licensee within a framework laid down in the approval, or under the auspices of the relevant ministry or department at the expense of the licensee.

The terms of an exploitation licence will thus be drawn up taking into account the nature and scope of the planned activities and assessments of market interest in establishing the relevant type of activity at the time the licence is being negotiated and issued. The licence terms will thus be drawn up on the basis of negotiations between the relevant ministry or department and the applicant.

The terms may both relate to the activity itself and the period after termination of the activity. Thus, on approval pursuant to section 9, terms may be set regarding environmental concerns after termination of the activities.

Subsection (2) stipulates that in connection with issuing licences pursuant to sections 3-4 and approvals pursuant to sections 8-10, the Government of Greenland may lay down terms aiming at ensuring that the licensee has the funds necessary to carry out the required clean-up operations and removal of installations etc. Such terms could stipulate that the licensee is to deposit an amount in a bank or provide a bank guarantee or a guarantee by a parent company for such expenses within a specified framework amount.

Terms under this provision could also include terms stipulating that the licensee must make accounting provisions, combined with terms ensuring that the provisions made in reality stay in the company and are thus available for performance of the necessary clean-up operations etc. Application of such terms in connection with a plan for termination of activities will have tax consequences and will thus be discussed with the Department of Taxation in the specific situations.

As regards exploitation activities, the specific provision of collateral should be made taking into consideration the specific exploitation activities as well as the scope and nature of the expected termination measures. Moreover, the terms should be adapted to the financial background of the licensee. The form of the collateral should be decided in discussions with the licensee.

As mentioned, the purpose of this provision is, for example, to establish the possibility of laying down terms that ensure fulfilment of the licensee's obligations under subsection (1), but at the same time in such manner that the possibilities of carrying out the activities are not significantly impaired. The terms laid down pursuant to the provision will thus have to balance the consideration for the fulfilment of the termination obligations and the consideration for the possibility of establishing and operating the exploitation activities on a reasonable financial basis. Thus, it may not always be possible to draw up terms pursuant to subsection (2) which, under all circumstances, will provide full financial security that the necessary termination measures can be completed.

Re section 13

Subsection (1) stipulates that both preliminary investigation and exploitation licences will have to include terms that regulate the ongoing clean-up

operations, waste disposal etc. to be carried out by the licensee in the affected areas.

For exploitation licences, terms are also to be laid down as regards what is to be done when activity is terminated – irrespective of the reason for such termination - with respect to clean-up operations and removal of the installations etc. established under the licence for the activities. Such final clean-up operations and removal of installations etc. must be carried out in accordance with the clean-up plan to be prepared and approved under section 9.

Re section 14

Subsection (1), which must be read in relation to section 6, is intended to prevent the exclusive rights obtained by a licensee under an exploitation licence issued pursuant to section 4(1) from unnecessarily hindering other parties from legally using the ice and water resources within the area of the licence.

Examples of this include urban structures and detached houses which use water from the area as well as general traffic in the area, including expeditions and tourists. Activities within the mineral resources area, both mineral and hydrocarbon exploration and exploitation, could also need water from the area.

The terms for this will have to be stipulated in the individual licences, taking into account e.g. the size and location of the area covered by the licence.

Re section 15

This provision is intended to make it possible to lay down more detailed terms in the different types of licence regarding forfeiture and withdrawal, adapted to the scope and nature of the activities.

Forfeiture of a licence may take place if a term of the licence stipulates that any non-fulfilment by the licensee of an obligation under the licence will entail that the licence ceases to be valid immediately. See for example the provisions in section 4(1)-(2).

Withdrawal of a licence may take place if a term of the licence stipulates that any non-fulfilment by the licensee of terms of the licence will allow the Government of Greenland to withdraw the licence within a specified time limit, unless the licensee ensures fulfilment of the relevant licence term before expiry of this time limit.

This provision is to ensure that, when a licence is granted, it has already been decided how any obligations, financial or otherwise, resting on the licensee under licence are to be dealt with.

Re section 16

This provision is to give explicit authority to lay down provisions regarding arbitration in preliminary investigation and exploitation licences. The intention of this is to seek to solve disputes quickly and to allow the arbitration court to be composed of special experts. The more detailed provisions regarding the

composition, competence, case processing etc. of the arbitration court will be laid down in the individual licences.

Re section 17

Subsection (1) contains provisions regarding the supervision by the Government of Greenland of the activities of licensees and regarding its authorities in this connection.

An example of another authority having been granted supervision competence under other legislation is the supervision by municipal councils pursuant to the "landstingsforordning om beskyttelse af miljøet" (order of the Landsting on protection of the environment).

The purpose of the provision is to ensure that the licensee acts in accordance with the regulations and terms applicable to the relevant licence.

The fact that the supervisory authority may carry out supervision without a court order and on providing due proof of identity is due to considerations regarding control measures. Supervision may be carried out in the form of random testing with short notice and without previous notification of the company, but it may also be regular routine inspections.

Subsection (2) allows authorities to initiate, in the event of breach, the necessary clean-up and termination measures at the expense and risk of the licensee.

Re section 18

Subsections (1)-(2) contain provisions on information and other reporting sent by the licensee to the Government of Greenland. The provision also stipulates conditions regarding the period within which such material must be treated as confidential by the authorities, as well as other conditions on confidentiality.

Similar provisions are included in the Mineral Resources Act.

Re section 19

Under current legislation, exploitation of ice and water for exportation requires a licence from several different authorities. Such activities will usually require allocation of land which is either allocated by the relevant municipality or by the Government of Greenland (Ministry of Housing and Infrastructure) in accordance with statements received from the municipality concerned. A licence to extract water must also be obtained from the Department for Environment and Nature and exportation of ice and water also requires a licence from the Bureau of Minerals and Petroleum. If exploitation involves food and drink activities, it is also necessary to obtain a licence from the Department for Environment and Nature.

This provision stipulates that the Government of Greenland can decide that an individual administrative authority is to be responsible for administering or coordinating activities covered by the Proposal, even if the legislation ascribes

other authorities competence to make decisions regarding individual parts of such activities.

The provision aims at implementing the "one-door" principle. This principle means that companies applying for a licence to exploit ice and water for exportation only need submit one application to a coordinating authority, after which this authority is responsible for the task of obtaining all licences or approvals required by legislation from the other authorities. The principle does not, therefore, change the distribution of competencies between the administrative authorities.

The provision also gives the Government of Greenland authority to, within the framework of the Proposal and through an Executive Order, lay down further provisions on how the coordinating administrative authority is to carry out its work. In such an Executive Order, the Government of Greenland can stipulate in more detail the competence ascribed by the Proposal to the coordinating administrative authority and it can describe in more detail how coordination with other authorities is to be carried out, including time limits for replies.

For other responsibilities of the coordinating administrative authority, see the general explanatory notes 5.

Re section 20

This provision stipulates that a statement will be obtained from the municipalities affected before a preliminary investigation licence or exploitation licence will be issued, cf. sections 3-4. If the areas are not covered by a municipality, the relevant citizens' council will be heard.

This provision should be read in the context of sections 6 and 14, under which a licence can be granted for others than the licensee to exploit ice and water within the area covered by the licence.

Planning considerations, for example drinking water supply, make it important that there is a hearing of the municipalities or citizens' council before an exploitation licence for commercial use is issued.

Although section 6 allows for others than the licensee to be issued with a licence to exploit ice and water in order to supply consumers in inhabited areas, this may be very invasive towards the licensee. It is therefore appropriate that any conflicts of interest between an application for exploitation and the plans of the relevant municipalities on use of ice and water resources are highlighted as far as possible before an exploitation licence is granted.

Re section 21

The provision aims at making it possible to distinguish between the different quality categories for ice and water exploited and exported under licences under the Act.

As described in the general explanatory notes it is expected that sales of ice and water will be in the form of a number of different product categories which do not necessarily have to be of the same quality and thus the same price. It is

therefore important to be able to separate the different products according to quality in order to ensure as far as possible that products of different levels of quality are not confused. Such confusion may mean that the licensee damages the reputation built up by another licensee through extensive investment, marketing and distribution.

In addition, it can be important for the final user to be able to see the quality category of the product.

This is the basis of a desire to introduce a certification scheme with quality categories for the various products as well as the possibility to insert terms on this in exploitation licences.

Re section 22

This provision stipulates that in situations where a company in the ice and water exportation area is established with participation by the Government of Greenland (Home Rule Government) under section 26(2), the Government of Greenland will decide which company is to manage this participation.

The provision also states that the Government of Greenland can lay down further rules on how such participation by the Government of Greenland (Home Rule Government) is to be managed. In this connection it may be decided to separate participation by the Government of Greenland (Home Rule Government) in a separate company, e.g. if the scope of such activities becomes significant or becomes such that it is appropriate to separate these activities from the company's other activities.

Re section 23

This provision stipulates that any transfer of a licence is subject to prior approval by the Government of Greenland, no matter whether it is a matter of direct or indirect transfer. In line with the situation regarding the mineral resources area, such transfer of licences is not expected to be an extraordinary arrangement, and is, further, expected to constitute a natural element in the development from preliminary investigations to possible exploitation. Very often, such transfer will be based on financial considerations.

Licences can be transferred either as direct transfer, where the actual licence is transferred from one licensee to a new licensee, or as indirect transfer, where the licensee is the subject matter of the transfer. Transfer may take place in the form of transfer of shares or issue of new shares of a size which gives the right to exercise a controlling influence over the company, or by agreements to this effect.

The provision also applies in the case of transfer among several parties holding the same licence.

In connection with transfer, authority approval implies for instance that the basis for meeting the obligations of the licensee under the licence is not to be impaired or removed as a result of the transfer. For exploitation licences, approval also implies that the basis for qualified operation of the activity and

subsequent termination is not to be impaired or removed as a result of the transfer.

The provision does not imply that the terms set up in the agreement between the parties on transfer are to be approved by the authorities.

Subsection (2) stipulates that licences issued under sections 3-4 are exempted from debt recovery proceedings. For instance execution cannot be levied on the licence by other parties, and, further, the licence cannot be transferred by an insolvent estate. This provision is required in order to prevent parties which do not comply with the provisions section 5, or which could, generally, not be approved by the Government of Greenland under subsection (1) from becoming a licensee

Similar provisions are included in the Mineral Resources Act.

Re section 24

This provision stipulates that the licensee's liability for damage caused by activities covered by preliminary investigation or exploitation licences falls under general rules on liability for damages. Thus, an objective liability for damages has not been stipulated for this type of activity, unless provided for in other legislation.

Under subsection (2), a licence may stipulate that the licensee's liability is to be covered by insurance or other security. The latter may be for instance a guarantee from the parent company or a bank guarantee. This provision also allows setting up terms for a combination of insurance and other security.

Similar provisions are included in the Mineral Resources Act.

Re section 25

This provision stipulates that each year a report is to be prepared on the activities in the ice and water exportation area. Reporting may be done in a separate report or a section in the overall annual report by the relevant ministry or department, where such report is prepared.

Re section 26

Under the provisions of subsections (1) and (2), the Government of Greenland may, as part of the terms of an exploitation licence, set up financial terms. Such terms may include terms for various types of charges, and terms on participation by the Home Rule in the activities covered by an exploitation licence. This corresponds to the terms applicable for mineral resources activities.

Under subsection (1), an exploitation licence may lay down terms with respect to the payment by the licensee of charges. Such charges may include:

- a. an annual charge based on the size of the licence area (area charge);
- b. a charge based on the volume of production and/or value (production charge).

In addition to these charges, a licensee must pay taxes in accordance with current tax legislation.

Under subsection (2), an exploitation licence may lay down terms stipulating that a company owned by the Government of Greenland is to be entitled to become a partner in the activity covered by the licence. Such participation by a company owned by the Government of Greenland corresponds to the participation established in exclusive rights licences in the hydrocarbon area in Greenland through the state and Home Rule-owned company Nunaoil A/S, and which, further, is a parallel to state participation in Denmark through the company DONG Exploration and Production A/S (the former DOPAS).

The purpose of Home Rule participation will, as is the case with the mineral resources area, be, first, to acquire insight and knowledge on this type of activity and build up competence in Greenland on this sector, and, second, to be able to - through the decision-making bodies of the licensee - influence the decisions taken by the companies.

The terms applying to participation by the Home Rule must be negotiated with the applicant, as part of the overall terms of an exploitation licence. Among the elements to be negotiated are the share of the licence, and, thus the exploitation activity, which the Home Rule-owned company can acquire, and financing by the company of this share.

See also notes to section 22.

Charges as well as participation by the Home Rule should be considered as instruments allowing Greenland society to achieve economic benefits in connection with an activity. However, the extent to which the instruments can be used depends on the specific exploitation projects and on negotiations with specific applicants.

Re section 27

This provision stipulates that charges can be fixed for both preliminary investigations and for exploitation licences. These charges can be fixed for the granting of the licence, or for prolongation and transfer of the licence, and for other situations where the authorities are engaged in extensive processing of cases relating to the licence.

Subsection (2) states that authority has been granted to fix the charge to be paid for submitting applications for such licences.

Subsection (3) states that the charges are to contribute to the costs of processing by the authorities in the cases specified above. Moreover, the charges may be fixed so as to cover these costs fully or partly.

Similar provisions are included in the Mineral Resources Act.

Re section 28

This provision aims at providing the authority to instigate compulsory acquisition in connection with activities within the framework of licences granted under the Act.

Re section 29

The provision gives authority to impose sanctions in the form of a fine on both natural and legal persons.

Re section 30

The provision in subsection (1) stipulates that the Ice And Water Exportation Act is to enter into force on 1 January 2001.

Subsection (2) stipulates that exportation licences regarding ice and water will, in future, have to be dealt with under the current Act and not as before according to the Order of the Landsting on exportation licenses for Greenland products.

Subsection (3) stipulates that reporting by licensees on activities carried out and the results thereof is not covered by the Act of the Landsting on access to public records. This is due to consideration for the confidentiality of reporting.

Re section 31

The provision in subsection (1) stipulates that those licences regarding the ice and water exportation area that have been granted at the entry into force of the Act will remain in force subject only to the amendments consequential upon the Act.

Subsection (2) stipulates that processing of applications regarding exploitation and exportation of ice and water not completed before entry into force of the Act will be continued by the relevant ministry or department in accordance with the provisions in the Act.