

Gas and electricity licences - Proposed changes to the Application Regulations and Revocation Schedules of future licences.

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Target audience: Gas and electricity licensees, potential new entrants, consumer groups and any other interested parties.

Overview:

We have undertaken a review of our licence application process in response to concerns that European energy markets could be targeted for large scale VAT fraud and more generally to ensure that our processes remain fit for purpose and proportionate. This document sets out the conclusions of this review and seeks views on a number of proposed changes.

We propose to change the Gas and Electricity Application Regulations which govern the procedures for granting licence applications. We propose to introduce a risk-based, three tier licence application process which will expedite simpler applications while allowing us to carry out a more detailed review of some applications where this is appropriate.

This document also sets out proposed changes to the Revocation Schedules of future gas and electricity licences. The proposed changes aim to align and reduce the time period after which a licence may be revoked for non-use to one year for all gas and electricity licences.

Contact name and details: Mark Cox - Associate Partner, Industry Codes and Licensing

Tel: 020 7901 7458

Email: licensing@ofgem.gov.uk

Team: Industry Codes and Licensing

Context

A number of activities within the gas and electricity markets are prohibited without a licence. The Gas Act 1986 and the Electricity Act 1989 (together "the Acts") provide for the Authority to grant licences to parties allowing them to undertake these prohibited activities. The Acts allow the Authority to make regulations which provide a mechanism for those wishing to participate in the gas and electricity markets to obtain a licence¹. The regulations currently in force (the "Current Application Regulations"²) were made under the Acts in December 2009.

From time to time we review our licence applications processes to ensure that they are still fit for purpose and proportionate. During the early part of this year we noted public statements raising concern over potential risk of VAT fraud in European energy markets. It is against this backdrop that we have initiated this most recent review of the licence application process and more generally the use of licences themselves.

This document sets out our proposed changes to the Current Application Regulations and current Guidance (the "Current Guidance Document")³ and other actions that we propose to take in particular to the revocation schedule of all future licences. Subject to responses to this consultation we will issue a final decision in the summer and make the necessary changes. Any changes to the current application process will take effect when the proposed New Regulations (the "New Regulations") come into force, which will be at least 21 days after the proposed new Regulations are made by the Authority.

Today we have also published as supplementary appendix documents a draft of the proposed New Regulations and also a revised version of the Current Guidance Document ("Revised Guidance Document) for Gas and Electricity licence applicants⁴.

¹. S.7B of the Gas Act 1986 and S.6A of the Electricity Act 1989.

². The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2009 SI 3190

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093190_en.pdf

and the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2009 SI 3191

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093191_en.pdf

³ Gas and electricity licence applications - Guidance, 17 December 2009

<http://www.ofgem.gov.uk/Licensing/Work/Documents1/Guidance%20Doc%202009.pdf>

⁴ Draft Application Regulations 2010 (Supplementary Appendix 1) and Draft guidance for gas and electricity licence applications (Supplementary Appendix 2)

Associated Documents

The Gas (Applications for Licences and Extensions and Restrictions of Licences)
Regulations 2009 SI 3190

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093190_en.pdf

The Electricity (Applications for Licences, Modifications of an Area and Extensions and
Restrictions of Licences) Regulations 2009 SI 3191

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093191_en.pdf

Gas and electricity licence applications - Guidance, 17 December 2009

<http://www.ofgem.gov.uk/Licensing/Work/Documents1/Guidance%20Doc%202009.pdf>

Table of Contents

Summary	1
1. Introduction	3
Review of licensing processes	3
Purpose of this document.....	4
Structure of this document.....	4
Next steps	5
New Application Regulations.....	5
Revised Guidance Document	5
Revocation Schedule of all future licences	5
2. Key proposed changes to the Current Application Regulations and overview of the proposed tiered application process.....	6
Key proposed changes to the Current Application Regulations	6
Introduction of risk based tiered application process.....	6
Change in format and language throughout.....	7
Proposed tiered application process	8
How we will determine whether an application is moved to Tier 2 and Tier 3	9
Risk assessment scores	10
At what stage in the application process can an application be moved to Tier 2 and Tier 3?	12
During initial checks for completeness	12
Overview of tiered application process	13
3. Unused and dormant licences	14
Introduction	14
Case study on gas shipper licences.....	15
Conclusion.....	17
4. Proposed changes to Revocation Schedules of future licences	19
Introduction	19
Proposed revised Revocation Schedule for all future licences	20
Appendices	22
Appendix 1 - Detail on proposed changes to the Current Application Regulations	23
General improvements	23
Risk based, tiered application process.....	23
Appendix 2 - Draft Revocation Schedules	29
Appendix 3 - Consultation Response and Questions	34
Appendix 4 – The Authority’s Powers and Duties	36
Appendix 5 - Feedback Questionnaire	39

Summary

We are proposing to make a number of amendments to the Current Application Regulations and the Current Guidance Document. We are also proposing to make changes to the Revocation Schedule of all future gas and electricity licences. This document sets out these changes in detail and the reasons for making them at this time. We welcome views on the proposed changes and our approach to implementation.

These proposals follow a recent review of our licensing processes. While we consider our existing procedures have generally worked well, we undertook this review largely because we became aware, during the early part of this year, of public statements raising concern over potential risk of VAT fraud in European energy markets. There have been recent instances of VAT fraud, known as Carousel, or Missing Trader Intra Community ("MTIC") fraud in European carbon trading markets⁵. We recognise that there is a risk that such fraud could potentially extend to GB energy markets.

While we consider that the risk of fraud is low and the potential impact is likely to be very limited (given lost VAT does not directly impact on GB energy consumers), if the fraud was of sufficient scale it could have an impact on wholesale prices. Fraud may also weaken confidence in the market arrangements. We need to have licensing processes in place that are proportionate to allow and support new entrants while providing sufficient hurdles to minimise the risk of fraudulent applications.

The central change proposed to the application process is a shift from the current 'one size fits all process' for assessing licence applications, to a new risk based, three tier application process:

- Tier 1 - Information to be provided by all applicants,
- Tier 2 - Additional information and evidence to be provided on request by Ofgem
- Tier 3 - Review of original identification documents and interview with Ofgem

The key purpose of the proposed tiered application process is to better facilitate the expedient processing of bona fide and complete and accurate applications, while filtering out for further scrutiny any applications that potentially:

- contain unexplained omissions, discrepancies or misstatements of fact; and/or
- demonstrate no clear intention to use the licence to carry out the licensable activity within a reasonable period.

⁵ Europol press release, 9 December 2009

The proposed tiered application process brings our application procedures more in line with processes used in other sectors whereby greater scrutiny is applied and additional information requested, only where deemed necessary rather than in all cases.

Some of the additional information requirements will apply to all applicants. We consider the introduction of a tiered application process to be a more proportionate means of addressing potentially fraudulent or inappropriate applications than making the proposed additional information requirements in Tier 2 and 3 compulsory for all applicants.

At the same time we have taken the opportunity to substantively re-write both the Current Application Regulations and the Current Guidance Document. The purpose of this is to make them clearer and more understandable for potential new applicants. We propose changes to the format of the Current Application Regulations in particular to make the current questions, which form the basis of the application, into a more explicit application form. We have also changed language with a greater use of plain English. These changes have mainly been driven by feedback from users of the Current Application Regulations. Corresponding changes have been made to the Current Guidance Document.

As well as revising our licence application process, we are seeking to better address the issue of unused licences in line with our better regulation duties. We propose to align the Revocation Schedules for all future gas and electricity licences so that revocation may occur if the licensee at any point ceases to carry out the relevant licensable activity, or does not start such activity within 1 year of the licence grant. This should contribute to better regulation by minimising redundant or dormant licences.

In summary, the proposed changes are designed to:

- mitigate risk of potentially fraudulent licence applications by adopting a tiered application process based on risk profiling;
- make the process of applying for a licence much clearer and easier for applicants;
- facilitate us in carrying out checks to verify the information provided in support of a licence application; and
- place minimal additional administrative burden on applicants balanced against the need to ensure that, as far as possible, only applicants that intend to use the licence for the purpose of carrying out licensable activities are granted a licence.

Lastly during our licensing process review, it has come to our attention that an apparently high number of licences are not being used for the purpose of carrying out the relevant licensable activity. This is particularly prevalent amongst gas shipper licence holders. We believe this may be driven by parties who just want to trade gas, driven by the requirements in the Uniform Network Code and the various exchanges. We seek views on whether this is appropriate and the impacts and consequences of changes to these arrangements.

1. Introduction

Review of licensing processes

1.1. We are responsible for establishing regulations setting out the processes required to apply for gas or electricity licences. From time to time we review the regulations and guidance to ensure that they are still fit for purpose and proportionate. We have undertaken a comprehensive review of our existing licensing processes to ensure that the regulations and other parts of the licensing framework are effective against the threat of potentially fraudulent applications and also in light of feedback over their ease of use.

1.2. In January this year we published an open letter⁶ noting that it had come to our attention that certain parties may be looking to operate in the European gas and electricity markets for potentially fraudulent purposes. The letter also encouraged all parties to be extra vigilant and take all reasonable steps to apply due diligence to protect against potential fraud.

1.3. To that end, we carried out a review of our own processes for assessing gas and electricity licence applications to ensure that the procedures we follow were robust, fit for purpose and offered sufficient protection against potentially fraudulent licence applications.

1.4. As part of this work, we instructed an independent review of our current licence application process. We now propose to revise our licence application process to implement the key recommendation of the independent review, which is to adopt a tiered application process based on risk profiling.

1.5. At the same time we have identified improvements to make the process of applying for a licence clearer and easier for applicants. These changes have mainly been driven by feedback from users on the ease of use Current Application Regulations.

1.6. Our review of the licensing process was not just constrained to the regulations themselves. We have also reviewed the status of existing licensees and it has become clear that some applicants may be applying for a licence:

- too far in advance of when the applicant actually intends to carry out the relevant licensable activities, or
-

⁶ Open letter - Potential fraudulent activity, Ofgem, 27 January 2010.

<http://www.ofgem.gov.uk/Licensing/Work/Documents1/Fraud%20Risk%20open%20letter.pdf>

- without having properly investigated or considered other relevant industry requirements or made contact with relevant industry parties⁷, or
- with little or no intention of using the licence for the purpose of carrying out the relevant licensable activities, or
- in the case of gas shippers, potentially for the purpose of securing membership to certain exchanges and trading platforms rather than for the purpose of carrying out the licensed gas shipping activities.

1.7. We do not consider it appropriate for a licence to be issued and then not used for purpose for some considerable time, if at all. We have developed potential changes to the licence application regulations and the licence revocation schedule to address this issue.

Purpose of this document

1.8. This document sets out and consults on the changes we propose to make to the Current Application Regulations and the Current Guidance Document for licence applicants.

1.9. It should be noted that the Current Application Regulations and Guidance Document, the proposed New Regulations and the Revised Guidance Document are not applicable to applications for offshore transmission licences⁸.

1.10. This document sets out and consults on proposed changes to the Revocation Schedule of all future licences. We are also consulting on potential changes to market arrangements that may be appropriate in relation to issues that have been identified with gas shipper licences.

Structure of this document

1.11. This review included three areas of activity that this document sets out in more detail. These are set out in the following chapters:

- Chapter 2: Key proposed changes to the Current Application Regulations and overview of the proposed tiered application process. This chapter sets out the high level changes that we propose to make to the Current Application Regulations Current Guidance Document and reasons. More detail on the specific changes and reasons can be found in Appendix 1.

⁷ Such are relevant Industry code administrators/owners.

⁸ Applications for an offshore transmission licence (as defined by S.6C(5) of the Electricity Act 1989) shall only be considered or granted by the Authority in accordance with The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009, SI No. 1340.
http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091340_en.pdf

- Chapter 3: Review of existing unused or dormant licences
- Chapter 4: Review of licence revocation schedule and proposed changes.
- Appendix 1- Detail on the specific changes to the Current Application Regulations
- Appendix 2. Provides example Revocations Schedules illustrating the proposed changes we intend to make to the Revocation Schedules of all future licences.

Lastly as we have also published two supplementary Appendix documents today which set out the proposed New Application Regulations and Revised Guidance Document.

Next steps

1.12. Responses to this consultation are due by 5pm on 29 July 2010. Subject to responses we anticipate publishing a decision letter on our proposals and detailed implementation in the Summer 2010. We expect implementation of our proposed changes will occur as follows:

New Application Regulations

1.13. We intend to repeal the Current Application Regulations and replace these with the proposed New Regulations. We will adopt a revised application process from the date the proposed New Regulations come into force.

Revised Guidance Document

1.14. We intend to publish a Revised Guidance Document⁹ to coincide with the new Application Regulations coming into force. The Revised Guidance Document will reflect the proposed changes and set out the revised procedures that we intend to follow when assessing applications for all types of gas and electricity licences. It also explains the process that follows a proposal to refuse an application for a licence.

Revocation Schedule of all future licences

1.15. All future licences granted after publication of our decision document will contain a revised Revocation Schedules.

⁹ See supplementary appendix 2

2. Key proposed changes to the Current Application Regulations and overview of the proposed tiered application process.

- ➔ This chapter sets out the proposed changes to the Current Application Regulations and the Current Guidance Document.
- ➔ This chapter also provides an overview of the proposed tiered application process and sets out how we will determine when an application is moved to the next tier.

Questions

Question 1: Do you agree with the proposed changes to the Current Application Regulations and the Current Guidance Document?

Question 2: Are there any additional questions which you consider could be included in the New Regulations?

Question 3: Do you have any additional comments on the content and format of the Revised Guidance Document?

Question 4: Do you have any views on the proposed introduction of a tiered application process, based on risk profiling?

Key proposed changes to the Current Application Regulations

2.1. The Current Application Regulations set out the manner and form in which applications for licences (or extensions or restrictions of licences)¹⁰ should be made and the fee payable for each type of application. In addition, they specify the information that applicants must provide in order for us to consider an application.

2.2. We propose to make the following key changes to the Current Applications Regulations. The proposed changes follow a review of our current processes for assessing gas and electricity licence applications

Introduction of risk based tiered application process

2.3. The central change to the Current Application Regulations reflects a shift from the current 'one size fits all application process' to a new risk based, tiered application process. The proposed tiered process will consist of the following three

¹⁰ And or modifications of an area for electricity transmission licences

tiers for the provision of information and documents in support of a licence application:

- Tier 1 - Information to be provided by all applicants
- Tier 2 - Additional information and evidence to be provided on request by Ofgem
- Tier 3 - Review of original identification documents and interview with Ofgem

2.4. The key purpose of the proposed tiered application process is to bring our application procedures more in line with processes used in other sectors whereby greater scrutiny is applied and additional information requested, only where deemed necessary rather than in all cases.

2.5. In our view a tiered application process better facilitates the expedient processing of bona fide, complete and accurate applications, while filtering out for further scrutiny any applications that may be incomplete, potentially fraudulent or demonstrate no clear intention to actually use the licence to carry out the licensable activity within a reasonable period, if at all.

2.6. This strikes the right balance between minimising the administrative burden on genuine new market participants whilst at the same time giving us greater scope to scrutinise applications where necessary.

Change in format and language throughout

2.7. In response to feedback from past licence applicants we also propose to make some changes in order to make completing an application more user friendly.

2.8. We propose to do this by making substantive changes to the format so that it resembles more a conventional application form. The current format sets out the information requirements within the main body of the regulations which applicants have found confusing and not in keeping with applicants general expectations to complete a conventional looking application form. We have therefore, converted the format into a more explicit application form. The application form will be attached as a schedule to the proposed new Application Regulations.

2.9. We have also included a new summary guidance section in the proposed New Regulations which provides answers to key frequently asked questions about the application process and, wherever possible, changed language with a greater use of plain English.

2.10. Corresponding changes have been made to the Current Guidance Document.

2.11. The proposed changes to the Current Application Regulations are set out in more detail in Appendix 1. A revised version of the Applications Regulations has also been published today (see supplementary appendix 1) which sets out the changes in full.

Proposed tiered application process

2.12. The table below summarises the proposed main information requirements under the different tiers. Tier 3 applicants may also be asked to bring their original documentation (such as company records) with them.

TIER 1	TIER 2	TIER 3
<ul style="list-style-type: none"><input type="checkbox"/> Applicants Details<input type="checkbox"/> Applicants' Directors details<input type="checkbox"/> Service address (if non GB)<input type="checkbox"/> Legal Status (Plc, Ltd, etc)<input type="checkbox"/> Applicants Holding/Parent Co and Director details<input type="checkbox"/> Disqualifications statements<input type="checkbox"/> Criminal Convictions Statement<input type="checkbox"/> Details of persons holding >20% of applicants shares.<input type="checkbox"/> Details of persons in effective control (if not body corp)<input type="checkbox"/> Details of licences held, revoked, or applied for by applicant or related person<input type="checkbox"/> Details of previously refused licence applications from applicant or related person.<input type="checkbox"/> Proposed arrangements to use licence for purpose.<input type="checkbox"/> Certified copy of Certificate of Incorporation and VAT Registration Certificate	<ul style="list-style-type: none"><input type="checkbox"/> Proof of contact with the relevant Code Administrators<input type="checkbox"/> Copies of any documents that verify information provided in application.<input type="checkbox"/> Details of any licence or authorisation refused, revoked, terminated by any other regulatory body<input type="checkbox"/> Applicants bank, Auditors, Solicitors details	<ul style="list-style-type: none"><input type="checkbox"/> Provide original ID Documents<input type="checkbox"/> Attend Interview with Ofgem
Signed Application Declaration		

2.13. All applicants will start the application process in Tier 1 and as such will be required to submit all the information and documents specified in the section 1 of the proposed new licence application forms¹¹.

2.14. Applicants that are moved to Tier 2 will be required to submit the additional information and documents as shown above on request by Ofgem. Applicants that are moved to Tier 3 will be required to produce original identification documents and

¹¹ The proposed new licence application licence forms will be attached as a Schedule to the New Regulations. - See supplementary appendix 1

attend an interview Ofgem. Tier 3 applicants may also be asked to bring their original company documentation (such as company records) with them.

2.15. For the avoidance of doubt it should be noted that an application does not necessarily need to have progressed through all three Tiers before a licence may be refused. A licence application may be refused at any time in the application process where we consider it does not meet the general criteria, or where appropriate, any specific criteria¹² for licence grant.

How we will determine whether an application is moved to Tier 2 and Tier 3

2.16. We conduct a number of checks with the relevant company registry and other sources¹³ as part of our procedures for assessing a licence application. The results of such checks inform our assessment of risk for each licence application.

2.17. All licence applications will be scored against the risk assessment criteria shown below. We will conduct an initial risk assessment on receipt of application and build on this risk assessment throughout the application process.

2.18. In broad terms, the key areas that the risk assessment will take into account are:

- unexplained omissions or discrepancies between the information provided in the application and the relevant company registry or other official sources;
- any difficulties we experience in verifying information provided;
- any information relevant to our decision to grant a licence which comes to, or is brought to our attention during the course of the application process; and,
- the applicants readiness/intent to use licence for the purpose for which it is granted.

2.19. Where we identify any omissions/discrepancy in the application, we will, in the first instance, seek an explanation from the applicant and consider any response.

¹² The general and, where appropriate, specific criteria for licence applications is set out in our guidance of licence applications. See supplementary appendix 2

¹³ Among others, Companies House <http://www.companieshouse.org.uk/>, the Insolvency Service: <http://www.insolvency.gov.uk/> and the London and Edinburgh Gazettes: <http://www.gazettes-online.co.uk/>

Risk assessment scores

2.20. We will assign the following points against each risk assessment criteria depending on whether the risk is identified as low, medium or high:

- Low = 0 points
- Medium = 1 point
- High = 2 points

As stated above, all applicants start the application process in Tier 1 and will be scored against the Tier 1 risk assessment criteria shown below.

2.21. Where a Tier 1 application accumulates an overall total risk score of:

- 3 or more points against the Tier 1 risk assessment criteria - the application may be moved to Tier 2

2.22. Similarly, for applicants that have been moved to Tier 2, the application will be scored against the Tier 2 risk assessment criteria shown below. Where a Tier 2 application accumulates an overall total risk score of:

- 2 or more points against the Tier 2 risk assessment criteria - the application may be moved to Tier 3

2.23. There is no specific risk assessment criteria for Tier 3. Applicants that are moved to Tier 3 will be:

- requested to provide original identification documents; and
- attend an interview with Ofgem to review and discuss any remaining issues and specific concerns with applicant directly,

prior to any decision on whether or not to grant a licence.

Risk assessment criteria - Tier 1

Tier 1	Risk Assessment		
	Low	Med	High
Applicant details			
Consistency with Company Registry: Match=Low, Unable to verify=Med, Inconsistencies/omissions= Med/High			
Company Status: Active=Low, Unable to verify/dormant=Med			
Filing/Account history: Up to date=Low, Late/overdue=Med			
Insolvency check: No match=Low, Unable to verify=Med, Match=High			
Minimal/generic applicant contact details given/publicly available?: No=Low, Yes=Med			
Company history: No recent changes=Low, frequent recent changes/previously unrelated business= Med			
Adverse information relevant to decision on licence grant discovered / bought to attention No=Low, Yes=Med/High)			
VAT Number			
Validated: Low, Not validated/De-registered=Med			
All directors, Major shareholders or Person(s) in effective control details			
Consistency with Company Registry: Match=Low, Unable to verify=Med, Inconsistencies/omissions= Med/High			
Minimal/generic applicant director contact details provided: No=Low, Yes=Med			
Disqualification check: No match=Low, Unable to verify=Med, Match: High			
Insolvency check: No match=Low, Unable to verify=Med, Match=High)			
Adverse information relevant to decision on licence grant discovered / bought to attention: No=Low, Yes=Med/High			
Applicant's ultimate holding Co/Parent undertaking details			
Consistency with Company Registry: Match=Low, Unable to verify=Med, Inconsistencies/omissions= Med/High			
Company Status: Active=Low, Unable to verify/dormant=Med			
Filing/Account history: Up to date=Low, Late/overdue=Med			
Insolvency check: No match=Low, Unable to verify=Med, Match=High			
Only minimal applicant contact details given/publicly available?: No=Low, Yes=Med			
Company history: No recent changes=Low, frequent recent changes/previously unrelated business= Med			
Adverse information relevant to decision on licence grant discovered/ bought to attention: No=Low, Yes=Med/High)			
Disqualification and Relevant Convictions statement			
Adverse information relevant to decision on licence grant specified in declaration or discovered/bought to attention No=Low, Yes=Med/High)			
Licences/application history of applicant or related person			
Licence(s) revoked or application(s) previously refused: No =Low, Yes=Med, Yes and relevant to decision on licence grant = High			
Proposed arrangements (including indicative timetable) for commencing licensable activity			
Substantive details provided=Low, Little indication of intent to commence licensable activity= Med			
Overall risk total			

Risk assessment criteria - Tier 2

Tier 2	Risk Assessment		
	Low	Med	High
Copies of official documents held by applicant that confirm key details provided in licence application			
Relevant copy documents provided=Low, Applicant indicates little or no documentation available=Med/High			
Evidence of Applicant's contact with relevant Code Owners/Administrators			
Copy correspondence confirming contact with view to becoming signatory/party to relevant codes provided =Low, Little contact made=Med, No substantive contact made=High			
Details of Applicants Bank, Solicitors, Auditors			
Verifiable details provided=Low, Unable to verify details provided=Med, Not provided (new company)=Low, Not provided (established Company)=Med/High			
Actions taken by other relevant regulatory body			
None=Low, Actions relevant to decision to grant taken by other relevant regulatory body=Med/High			
Overall risk total			

2.24. Further information on the risk assessment criteria is provided in the draft Revised Guidance Document - Supplementary Appendix 2.

At what stage in the application process can an application be moved to Tier 2 and Tier 3?

2.25. An application may be moved through the Tiers and hence required to submit additional information and documents in support of its licence application at two stages in the application process.

During initial checks for completeness

2.26. On receipt of a licence application we will carry out a number of initial checks¹⁴ to ensure that the application is complete and to verify key application details¹⁵. Alongside these initial checks we will also carry out an initial risk assessment based

¹⁴ For example we will check against Companies House records to ensure that applicants registration number is correct and that details of all current directors and major shareholders have been provided

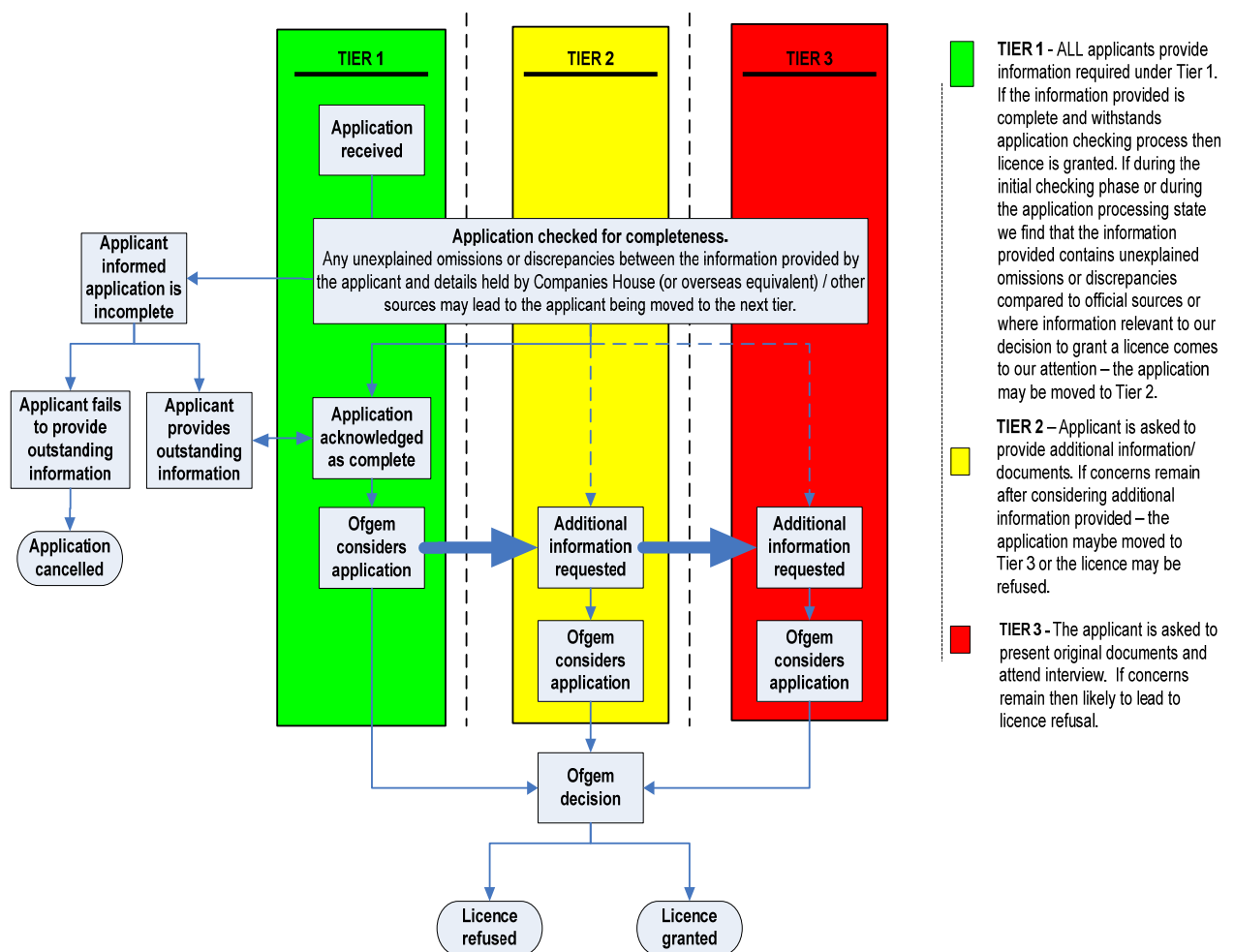
¹⁵ To be considered complete an application must be in the form and manner specified in the Applications Regulations and contain all the information and documents specified therein.

on the results of these initial checks and score the application against the risk assessment criteria shown above.

During the course of processing the application

2.27. As well as during the initial checks for completeness stage, an application may be moved to Tier 2 or Tier 3. i.e. during the course of assessing the application.

Overview of tiered application process



3. Unused and dormant licences

→ This chapter sets out issues identified with unused licences with particular focus on gas shipper licences.

Questions

Question 1: Do you have any views as to why such a high number of gas shipper licences are not being used for their intended purpose?

Question 2: Do you think further action is necessary or proportionate given the issues raised in the chapter in relation to gas shipper licences?

Question 3: Do you agree that parties should not be required to obtain a gas shipper licence prior to being able to carry out non-physical trades of gas?

Introduction

3.1. Unused and dormant licences are not a new issue. We undertook a review of our revocation policy in 2007¹⁶. At this time we established that there were a number of unused and dormant licences across the different market sectors.

3.2. We do not consider it appropriate for licensees to continue to hold a licence that is not being used for its intended purpose. In our view licences that are not being used should, wherever possible, be revoked¹⁷. As we set out at the time, the reasons for this are:

- The proliferation of licences and in particular the potential for a single company to hold multiple licences undermines the basis on which Collective Licence Modification procedures operate by diminishing the weighted vote of those who hold a single licence;
- Surplus licences may also contribute to a distorted picture of competition. For example, the number of supply licence holders may suggest to consumers that there are more alternative suppliers than there actually are, given that a number of these supply licence holders may have ceased or not commenced supply activities.

¹⁶ Decision Letter - Review of policy on licence revocations, Ofgem, 27 February 2007.

http://www.ofgem.gov.uk/Licensing/Work/Notices/RevocNotice/Documents1/17082-Decision_letter_revocation_policy.pdf

¹⁷ In accordance with paragraph 1(e) of the revocation provisions of a licence.

- The existence of inactive licences could be administratively inefficient for both the applicant and Ofgem.

3.3. In line with the last review of our revocation policy we have periodically, since this time, contacted licensees whose licences are not being used and revoked surplus licences where appropriate.

3.4. With the added risk of the potential for fraudulent applications it is even more important that unused or dormant licences are revoked. For the reasons set out above we intend to continue our policy of periodically seeking to revoke unused and dormant licences. We also propose to make changes to the licence revocation schedules to further facilitate this process. Details are provided in chapter 4. However our review has also highlighted a particular issue with gas shipper licences.

Case study on gas shipper licences

3.5. A gas shipper licence allows the licensee to arrange with a Gas Transporter (GT) for gas to be introduced into, conveyed through, or taken out of a pipeline system operated by that GT, either generally or for purposes connected with the supply of gas to premises¹⁸.

3.6. There are currently 243¹⁹ gas shipper licences. We noted a significant increase in gas shipper licence applications during 2009 with 22 new licences issued. Given this as part of our review of the licensing activity we undertook a more detailed review of gas shipper licences.

3.7. In order to be able to carry out gas shipping activities a licence holder, in addition to holding a licence, will need to be party to the Uniform Network Code (UNC) and have successfully set an account on xoserve²⁰ systems.

3.8. To get a clearer picture of the status of gas shipper licences we asked xoserve to provide us with details of parties that are using their systems for shipping or trading purposes. Initial indications suggest that the issue of licences not being used for their purpose is particularly pronounced amongst gas shipper licence holders.

3.9. The information provided by xoserve indicated that as much as 45% of gas shipper licences are not being used actively. An indicative table is set out below detailing this information.

¹⁸ As defined under s5(1)(c) of the Gas Act 1986

¹⁹ As at 14 April 2010

²⁰ xoserve manages the commercial interfaces between the major gas transporters operating in Great Britain and Gas Shippers

Shipper licence holders as at 14 April 2010

Total gas shipper licence holders	243	Percentage
Listed as physically shipping on xoserve systems	49	20%
Listed as trading only on xoserve systems	85	35%
Listed as inactive on xoserve systems	23	10%
NOT listed on xoserve systems	86	35%

3.10. We note that at least some of this is due to businesses who have just recently entered the market or for historic reasons have had a shipper licence and are no longer using it. For instance, the licensee may have ceased trading and voluntarily withdrawn from the market, or simply chosen not to enter the market having made initial preparations, or following market consolidation some companies hold several licences.

3.11. However, it is clear, even from just these indicative numbers, that up to 35% of licensees are using xoserve's systems solely for the purposes of trading. There is also a further 45% of licensees who are either inactive on xoserve's systems or do not appear to be shipping or trading on the GB system. It may therefore be that only a minority of gas shipper licensees are actually using the licence for the purpose set out, namely to ship gas across the GB transportation network.

3.12. One reason for the apparent surplus gas shippers licences may be the prerequisite being set by trading platforms/exchanges and Xoserve to hold a gas shipper licence before you can access the Gemini system²¹ and trade.

3.13. We understand that this market entry requirement stems from the current wording of the gas transporters' network codes/ the UNC governing transportation arrangements and access to systems run on behalf of the gas transporters by xoserve. This stipulates that you must be a licensed gas shipper before you can access the systems²².

3.14. While we note that these codes contain the credit cover rules parties using gas transporters' systems are expected to adhere to and that commercial arrangements are necessary to cover traders' liabilities, there does not appear to be any distinction between those who wish to physically ship the gas and those who simply want to trade the commodity. This is different from the electricity market where non-physical traders are able to access and use systems alongside licensed parties.

²¹ The Gemini system is managed and operated by xoserve and enables gas shippers to carry out gas nominations, energy balancing and exit capacity booking.

²² Section V. 2.1.2(b) of the UNC

3.15. While we understand parties' desire to ensure that appropriate commercial arrangements are in place, we do not consider this a sufficient justification for requiring an entity with no intention of physical shipping to obtain a licence which they will then not use for the purpose it was granted.

3.16. We also want to ensure that licences are not being erroneously relied on in place of industry pre-contractual checks. In issuing a licence, we do not give any guarantee, warranty or endorsement of any application (or related person), their financial status, or business methods. Nor do we carry out financial checks on applicants. In this regard, there are no checks we could carry out at the application stage that could offer ongoing comfort to other industry participants. Accordingly, in our view it is inappropriate for licences to be treated as replacing, or indeed forming part of, industry due diligence.

3.17. We further note that all licences contain a term enabling us to revoke the licence if the licensee has either ceased, or failed to start the licensable activity²³. Consequently, the market requirement to hold a gas shipper licence to carry out activities other than physical gas shipping could in our view be a discriminatory bar to market participation. This could result in the situation where a licence which has never been used for purpose has rightly been revoked, but the market rules prevent the entity whose licence has been revoked from continuing their chosen non-licensable activity.

3.18. Accordingly, we consider the market entry requirements, security and other commercial terms to deal with traders' liabilities could appropriately be covered by changes to the relevant provisions of the network/uniform network codes and any inter-party contracts, rather than by the artificial step of becoming a gas shipper licence holder in name only in order to fit in the current process when there is no intention of physical shipping/use of the licence for its purpose.

3.19. We consider that this could substantially improve clarity to market participants on the status of the entities that they are contracting with. We also consider that changes to these arrangements could also reduce administrative burden for Ofgem and market participants.

Conclusion

3.20. We are of the view that the UNC and, consequently, other market arrangements could, in principle, distinguish fully between those parties who intend to carry out physical and non-physical trades. This could extend to appropriate market entry requirements and arrangement to deal with any out of balance trades, to the extent they would not already be adequately covered in inter-party

²³ Currently 3 years in the case of gas licences and 5 years in the case of electricity licences.

agreements. This will also offer more clarity on the nature of entities market participants are contracting with, facilitate more appropriate and targeted risk management and, in our view, result in better regulation and administration.

3.21. We would welcome views on the reasons behind the existence of licences not being used for the purpose they were granted, the extent to which the current arrangements do impose barriers to market entrants and whether modifications to UNC and other agreements are proportionate and an effective remedy to these issues.

3.22. We also note that in line with our conclusions of the 2007 review we will continue with our policy of writing to licensees who appear to be inactive or dormant and seeking to revoke licences where appropriate. During 2010 we have so far written to electricity suppliers and gas shippers.

3.23. For the reasons set out above we do not consider it appropriate for licensees to continue to hold a licence that is not being used for its intended purpose. In our view licences that are not being used should, wherever possible, be revoked²⁴. Further proposals to better address our ability to revoke unused licences in future are explored in Chapter 4.

²⁴ In accordance with paragraph 1(e) of the revocation provisions of a licence.

4. Proposed changes to Revocation Schedules of future licences

→ This chapter sets out our proposed changes to the Revocation Schedule of all future gas and electricity licences.

Questions

Question 1: Do you agree with our proposed changes to the Revocation Schedule of future licences? In particular:

Question 2: Do you agree we should align the Revocation Schedule between the gas and electricity sectors?

Question 3: Do you agree that we should reduce the time period to 1 year before a licence can be revoked in cases where parties have not commenced the licensable activity?

Introduction

4.1. The Revocation Schedule of a licence sets out the circumstances that may result in its revocation²⁵. As part of our review of the licensing process we have considered the arrangements in place to revoke licences. The grounds to revoke a licence are set out in Appendix 2.

4.2. In undertaking our review of the licensing process we identified that the existing provisions for revocation did not deal well with the situation where a party had provided false information in pursuit of a licence.

4.3. We took immediate steps to address this. On 4 March 2010 we published a letter²⁶ setting out a change to the Revocation Schedule for all new licences to include a new provision which allowed for a licence to be revoked by the Authority²⁷ at any time where it is satisfied that there has been a material misstatement (of fact) by, or on behalf of the Licensee, in making its application for a licence. It is considered that this additional provision will allow us to better address situations where parties have provided information which subsequently turns out to be false.

²⁵ Schedule 2 of gas and electricity licences

²⁶ Amendments to Revocation Schedules of future licences

<http://www.ofgem.gov.uk/Licensing/Work/Documents1/Amending%20licence%20terms%20letter%20-%20Final.pdf>

²⁷ By giving no less than 7 days notice in writing.

4.4. Now that we have had further time to consider the matter and become more fully aware of the extent of dormant and unused licences we consider that this change to the Revocation Schedule, while appropriate, should also be supplemented with further changes for future licences.

4.5. In chapter 3 we set out in further detail the issues that we have identified with dormant and unused licences. It is in response to these issues along with the concerns raised earlier relating to potential fraud in the energy markets that we have reviewed the revocation provisions within the licence.

Proposed revised Revocation Schedule for all future licences

4.6. The situation with respect to the number of surplus licences is compounded by the time limits contained within the current Revocation Schedule of gas and electricity licences. These give a licensee 3 or 5 years respectively to commence the licensable activity. We consider the current time limits to be too long and there is a need for alignment between gas and electricity licences for consistency and clarity.

4.7. We also note that the Revocation Schedule of some licence types stipulate a time limit before a licence may be revoked for cessation of licensable activities, whilst other licence types do not. For example, the Revocation Schedules of gas and electricity supply licences stipulate that a licence may be revoked after 3 and 5 years respectively where a licensee has ceased the licensable activity. However, the corresponding provision in gas shipper licences does not stipulate any time limit for revocation where the licensee has ceased licensable activities. We consider that aligning the Revocation Schedules of all licence types will aid clarity.

4.8. We also recognise that new licence applicants may potentially become holders of licences which are not used in the future which is why we have proposed changes to the Current Application Regulations described above to allow for closer scrutiny of an applicant's intention/readiness to use the licence for the purpose stated in the application.

4.9. To more effectively address the issue of unused licences in the future, to reduce the risk of fraud and, in line with our better regulation duties, we are proposing to change the Revocation Schedule provisions relating to the time period for revocation where the licensee has ceased or has not commenced licensable activity within the specified time²⁸ for all future licences. We note that this will introduce a difference between the Revocation Schedule of exiting and future licences but consider the proposed changes justified for the reasons given.

²⁸ Paragraph 1(e) of the Revocation Schedule of licences.

4.10. We propose to amend these specific provisions with a view to aligning the provisions across all licence types for gas and electricity (for future licences) as follows:

- from the current 3 years in gas licences and 5 years in electricity licences to 1 year for all licence types in respect of non-commencement of the relevant licensable activity; and
- remove the time limit for revocation in instances where the licensee has ceased the relevant licensable activity for all licence types. This is already standard in most licences and will bring supply licences into line in this regard.

4.11. It should be noted that we are not proposing to automatically revoke a licence in instances where the proposed new revocation provisions are met. We will always provide a licensee with an opportunity to make representations as to why its licence should not be revoked and fully consider any representations that are made before making any final decision on whether to revoke the licence.

4.12. For example, we are unlikely to revoke a licence solely on the grounds that a licensee has not commenced licensable activities within the revised period of one year in a case where the licensee provides clear evidence of completed and on-going arrangements to do so in the near future.

4.13. The amended drafting is set out in Appendix 2 using the existing gas shipper and electricity supply licence Revocation Schedules as examples to illustrate the proposed changes. Corresponding changes will be made to all other future gas and electricity licences.

Appendices

Index

Appendix	Name of Appendix	Page Number
1	Detail on proposed changes to the Application Regulations	23
2	Draft revised Revocation Schedule	29
3	Consultation response and questions	34
4	The Authority's Powers and Duties	37
5	Feedback Questionnaire	39

Appendix	Name of Appendix
Supplementary Appendix 1	Draft Application Regulations 2010
Supplementary Appendix 2	Draft guidance for gas and electricity licence applications

Appendix 1 - Detail on proposed changes to the Current Application Regulations

1.1. We have set out below in more detail our proposed changes to the Current Application Regulations.

General improvements

1.2. To make the process of applying for a licence clearer and easier to understand we propose to:

- substantively change the format of Schedules 1 and 2 of the Current Application Regulations to turn the questions into an application form²⁹ as a Schedule to the proposed New Regulations; and
- amend the language of the questions throughout the proposed application forms to make it clearer and easier to understand.

Risk based, tiered application process

Tier 1

Additional information concerning an applicant's current directors and major shareholders or persons in effective control of the applicant.

1.3. Insert a new requirement to provide the following additional information about all of the applicants' current directors³⁰, major shareholder(s) (where it is an individual) or person(s) in effective control:

- Date of birth;
- Date of current appointment as director/shareholding effective date; and
- Previous home address (if less than 3 years at current address).

1.4. The above additional information will facilitate checks³¹ that we carry out with respect to such persons as part of the application process. Dates of birth and all previous addresses within the last three years allow us to distinguish between two persons who share the same name.

1.5. It is important to ensure that we have accurate details with respect to all current directors and major shareholders. However, we also recognise that recent director

³⁰ Including shadow directors within the meaning of section 251 of the Companies Act 2006) or where applicable the corresponding officers

³¹ For example, we will carry out checks using with Companies House and the Insolvency Service to ensure that an applicants directors or major shareholders are not disqualified or undischarged bankrupts.

appointments or share transfers may not be reflected in official sources. Asking for confirmation of dates provides greater clarity with respect to dates directors were appointed and effective dates of shareholdings.

Names of directors of parent undertaking³²

1.6. The Current Application Regulations request the name of both the ultimate holding company and the parent undertaking but only ask for the names of the ultimate holding company³³ directors.

1.7. We propose to insert a requirement for applicants to provide the names of directors of any parent undertaking for consistency and also to allow us to conduct the same checks on the directors of the parent undertaking, that we currently carry out for the directors of the ultimate holding company.

1.8. To minimise the administrative burden on licence applicants we do not propose to ask for the dates of birth, dates of current appointments, or home addresses of the directors of the applicant's ultimate holding company or parent undertaking.

1.9. However, we may request these additional details from the applicant where our checks indicate a potential match with, for example, a person listed with Companies House as being a disqualified director or listed as bankrupt or subject to a voluntary agreement by the Insolvency Service³⁴.

VAT registration number and certified copy of VAT registration certificate

1.10. To mitigate against the risk of potential VAT fraud in the gas and electricity energy markets, we propose to insert a requirement for applicants to provide their VAT registration number together with a certified copy of their VAT registration certificate³⁵.

1.11. We will carry out checks with HMRC and other available sources to confirm that the VAT number provided is valid.

4.14. In the event that an applicant's VAT number is not valid the reasons for this will be taken into account in considering their licence application together with any misstatement of fact.

³² Within the meaning of section 1162 of the Companies Act 2006

³³ Within the meaning of section 1159 and 1160 of the Companies Act 2006

³⁴ <http://www.companieshouse.org.uk/> and <http://www.insolvency.gov.uk/>

³⁵ Where an applicant is registered for VAT purposes

Details of trading names (if any) and company registration number of any parent undertaking or ultimate holding company

1.12. It is possible that information potentially relevant to our decision on whether to grant a licence may be recorded in online and other sources under the applicant's, its parent undertaking's or ultimate holding company's trading names (if any) in addition to, or instead of, the registered name.

1.13. To that end, we propose to insert a requirement for applicants to provide details of any trading name to allow for more thorough searches/checks to be carried out.

1.14. Applicants are currently required to provide certain details about any parent undertaking or ultimate holding company. We also propose to extend current requirements to include a requirement to also provide the company registration number of any parent undertaking or ultimate holding company to facilitate our checks to verify the information provided.

Name of the commercial register in which the applicant is registered in its country of incorporation and certified copy of its certificate of incorporation

1.15. We recognise that some Company Registries are more readily accessible than others for the purposes of checking company registration details.

1.16. We therefore propose to extend existing requirements by requiring the name of the relevant company register to be specified and Certificate of Incorporation provided to be certified. This is to assist us with verifying an applicant's company registration details where the relevant company registry is not readily accessible and to mitigate against potentially fraudulent certificates being provided.

Requirement to provide details of proposed arrangements (including indicative timetable) to commence the relevant licensable activity

1.17. We do not consider it appropriate for licences to be issued to parties who do not then use it for the purpose for which it was granted for some years after licence grant, if at all, for example either because they:

- applied far too much in advance of when they actually intended to commence licensable activities;
- had little intention to use the licence;
- were ill prepared for market entry; or
- potentially to satisfy membership requirements imposed by third parties.

1.18. We therefore propose to insert a requirement for applicants to provide details of proposed arrangements to commence the relevant licensable activity to gauge an applicant's readiness to commence licensable activities and intent to use the licence for the purpose stated in the application.

1.19. This will also help to identify any further assistance applicant's may need in preparing to enter the relevant market.

Details of previously refused licence applications or revoked licences

1.20. The Current Application Regulations require applicants to provide details of any licenses held, applied for (whether successfully or not), or intended to be applied for, by the applicant or any person related to the applicant.

1.21. We propose to extend this requirement to also include details of any:

- licences previously held by the applicant or a related person that have been revoked; and
- licence applications previously made by the applicant or a related person (under the Acts) which were refused.

1.22. This will assist us in more readily identifying and considering any instances of previously refused licence applications or licence revocations to assess whether it is relevant to our decision on whether to grant a licence.

Tier 2

Copies of any official documents held by the applicant that verifies information provided in licence application

1.23. Where an applicant has been moved to Tier 2 because, amongst other things, we have experienced difficulties³⁶ verifying key details in the application. We consider it appropriate to request the applicant to provide us with copies of any official documentation held by the applicant which confirms key details provided in the application³⁷.

1.24. It should be noted that in order to minimise any additional burden on the applicant we only propose to request copies of any official documentation that the applicant should already hold. However, applicants are not prevented from securing and providing at their own volition any additional official documentation in support of their application for us to consider.

1.25. We the ore propose to amend the Current Application Regulations to include a requirement for applicants moved to Tier 2 to provide copies of any official

³⁶ Due to lack of readily available access to relevant official sources such as the relevant company registry.

³⁷ For example, amongst other things, copies of official documentation confirming current appointments of directors such the notification to the relevant company registry.

documents held by the applicant that verifies key details provided in the licence application. An example of this could include provision of stock transfer forms.

Copy correspondence confirming applicant's contact with relevant industry parties and details of the applicant's bank, solicitors and auditors

1.26. Given the higher assessment of risk which results in an applicant being moved to Tier 2, we consider it appropriate to amend the Current Application Regulations to require Tier 2 applicants to provide:

- copy correspondence confirming their contact with relevant industry code owners/administrators and, where appropriate, the electricity distribution and transmission and gas transportation and distribution system operators; and,
- details of their bank, solicitors and auditors.

1.27. This further information/copy documentation facilitates our assessment of the applicant's authenticity and intent to use the licence for the purpose of carrying out the relevant licensable activity.

Details of any actions taken by any other relevant regulatory in respect of any licence or authorisation etc issued

1.28. Again, given the higher assessment of risk which results in an applicant being moved to Tier 2, we consider it appropriate to require an applicant moved to Tier 2 to provide details of any actions that may have been taken with respect to any licence or authorisation etc granted by another relevant regulatory body³⁸.

1.29. We therefore propose to insert a requirement seeking confirmation as to whether the applicant, any partner, trustee or director (including shadow directors within the meaning of section 251 of the Companies Act 2006) has ever been refused, had restricted, terminated or revoked, any licence, authorisation, registration, notification, membership or other permission granted by any other regulatory body.

1.30. We will consider the details of any such action by another relevant regulatory body and assess whether it's relevant to our decision on whether to grant a licence.

³⁸ Actions taken by certain regulatory bodies will be more relevant than others. For example, any decision by another industry regulator, such as Ofcom and Ofwat, is more likely be considered more relevant to our decision on granting a licence than any action taken by, for example, the Driving Standards Agency.

Tier 3Provide original identification documents and attend interview

1.31. We propose to amend the Current Application Regulations to require Tier 3 applicants to:

- Provide original identification documents (or produce at interview); and,
- attend an interview with Ofgem.

1.32. This allows us review and discuss any remaining issues and specific concerns with applicant directly prior to any decision on whether or not to grant a licence.

Appendix 2 - Draft Revocation Schedules

The appendix uses the existing gas shipper and electricity supply licence Revocation Schedules as examples to illustrate the proposed changes. Corresponding changes will be made to all other future gas and electricity licences.

Draft Gas Shipper Revocation Schedule

SCHEDULE 2

Revocation

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:
 - (a) if the licensee agrees in writing with the Authority that the licence should be revoked;
 - (b) if any amount payable under standard condition 2 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
 - (c) if the licensee fails:
 - (i) to comply with a final order (within the meaning of section 28 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
 - (ii) to pay any financial penalty (within the meaning of section 30A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
 - (d) if the licensee fails to comply with:

- (i) an order made by the court under section 34 of the Competition Act 1998;
- (ii) an order made by the Authority under Sections 158 or 160 of the Enterprise Act 2002;
- (iii) an order made by the Competition Commission under Sections 76, 81, 83, 84 and 161 of the Enterprise Act 2002;
- (iv) an order made by the Secretary of State under Sections 66, 147, 160 or 161 of the Enterprise Act 2002.

(e) if the licensee:

- (i) ceases to carry on its business as a gas shipper; or
- (ii) shall not have commenced business as a gas shipper within a period of 1 year from the date on which the licence takes effect;

(f) if the licensee:

(i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);

(ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;

(iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;

(iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or

(v) becomes subject to an order for winding-up by a court of competent jurisdiction; or

2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.

3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.

4. The Authority may at any time revoke the licence by giving no less than 7 days notice in writing to the Licensee where the Authority is satisfied that there has been a material misstatement (of fact) by, or on behalf of the Licensee, in making its application for the Licence.

Draft Electricity Supply Revocation Schedule

SCHEDULE 2

Revocation

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:

(a) if the licensee agrees in writing with the Authority that the licence should be revoked;

(b) if any amount payable under standard condition 4 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;

(c) if the licensee fails:

(i) to comply with a final order (within the meaning of section 25 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or

(ii) to pay any financial penalty (within the meaning of section 27A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;

(d) if the licensee fails to comply with

(i) an order made by the court under section 34 of the Competition Act 1998;

(ii) an order made by the Authority under Sections 158 or 160 of the Enterprise Act 2002

(iii) an order made by the Competition Commission under Sections 76, 81, 83, 84 and 161 of the Enterprise Act 2002

(iv) an order made by the Secretary of State under Sections 66, 147, 160 or 161 of the Enterprise Act 2002.

(e) if the licensee:

(i) has not within 1 year after the date on which this licence comes into force, commenced the supply of electricity to any premises within the specified area in Schedule 1 to the licence; or

(ii) has ceased to supply electricity to all of those premises within the specified area in Schedule 1;

(f) if the licensee:

(i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);

(ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;

(iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;

(iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or

(v) becomes subject to an order for winding-up by a court of competent jurisdiction; or

2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.

3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.

4. The Authority may at any time revoked the licence by giving no less than 7 days notice in writing to the Licensee where the Authority is satisfied that there has been a material misstatement (of fact) by, or on behalf of the Licensee, in making its application for the Licence.

Appendix 3 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document. (In particular, we would like to hear from gas and electricity licensees and potential new entrants and consumer groups).

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 5pm on 29 July 2010 and should be sent to:

- Ikbal Hussain
- Licensing Manager
- Ofgem
- 9 Millbank
- London
- SW1P 3GE
- 020 7901 7049
- ikbal.hussain@ofgem.gov.uk

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish their responses to remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Having considered the responses to this consultation, Ofgem will decide what steps it should take next, and in particular, whether to make the changes proposed in this consultation.

1.7. Any questions on this consultation should, in the first instance, be directed to be directed to Ikbal Hussain on Tel: 020 7901 7049 or by email:
ikbal.hussain@ofgem.gov.uk

Chapter 2

Question 1: Do you agree with the proposed changes to the Current Application Regulations and the Current Guidance Document?

Question 2: Are there any additional questions which you consider could be included in the New Regulations?

Question 3: Do you have any additional comments on the content and format of the Revised Guidance Document?

Question 4: Do you have any views on the proposed introduction of a tiered application process, based on risk profiling?

Chapter 3

Question 1: Do you have any views as to why such a high number of gas shipper licences are not being used for their intended purpose?

Question 2: Do you think further action is necessary or proportionate given the issues raised in the chapter in relation to gas shipper licences?

Question 3: Do you agree that parties should not be required to obtain a gas shipper licence prior to being able to carry out non-physical trades of gas?

Chapter 4

Question 1: Do you agree with our proposed changes to the Revocation Schedule of future licences? In particular:

Question 2: Do you agree we should align the Revocation Schedule between the gas and electricity sectors?

Question 3: Do you agree that we should reduce the time period to 1 year before a licence can be revoked in cases where parties have not commenced the licensable activity?

Appendix 4 – The Authority's Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute (such as the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Acts of 2004, 2008 and 2010) as well as arising from directly effective European Community legislation.

1.3. References to the Gas Act and the Electricity Act in this appendix are to Part 1 of those Acts.³⁹ Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This appendix must be read accordingly.⁴⁰

1.4. The Authority's principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases and in the security of the supply of gas and electricity to them.

1.5. The Authority is generally required to carry out its functions in the manner it considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or commercial activities connected with,

- the shipping, transportation or supply of gas conveyed through pipes;
- the generation, transmission, distribution or supply of electricity;
- the provision or use of electricity interconnectors.

1.6. Before deciding to carry out its functions in a particular manner with a view to promoting competition, the Authority will have to consider the extent to which the interests of consumers would be protected by that manner of carrying out those functions and whether there is any other manner (whether or not it would promote competition) in which the Authority could carry out those functions which would better protect those interests.

³⁹ Entitled "Gas Supply" and "Electricity Supply" respectively.

⁴⁰ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

1.7. In performing these duties, the Authority must have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them⁴¹; and
- the need to contribute to the achievement of sustainable development.

In performing these duties, the Authority must have regard to the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.⁴²

Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed⁴³ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply,
- and shall, in carrying out those functions, have regard to the effect on the environment.

1.8. In carrying out these functions the Authority must also have regard to:

- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

The Authority may, in carrying out a function under the Gas Act and the Electricity Act, have regard to any interests of consumers in relation to communications services and electronic communications apparatus or to water or sewerage services (within the meaning of the Water Industry Act 1991), which are affected by the carrying out of that function.

1.9. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the

⁴¹ Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Acts in the case of Electricity Act functions.

⁴² The Authority may have regard to other descriptions of consumers.

⁴³ Or persons authorised by exemptions to carry on any activity.

legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation⁴⁴ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

⁴⁴ Council Regulation (EC) 1/2003.

Appendix 5 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

Andrew MacFaul
Consultation Co-ordinator
Ofgem
9 Millbank
London
SW1P 3GE
andrew.macfaul@ofgem.gov.uk