

Gas and electricity licence applications - Guidance



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

Overview:

This document sets out the 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 by us not to grant a licence.

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Context

An EU Directive¹ requires the publication of objective and non-discriminatory criteria and procedures for assessing gas licence applications. Since 2002 we have published such guidance which applies to both gas and electricity licence applications.

In light of the implementation of the EU Services Directive² via the Provision of Services Regulations 2009 (the "Services Regulations")³ a number of changes have been made to our licensing process. This guidance takes account of these changes.

Associated Documents

- Gas and Electricity Licence Applications - Guidance Document, October 2008.
<http://www.ofgem.gov.uk/Licensing/Work/Documents1/LicAppGuidance011008.pdf>
- EC Services Directive- 2006/123/EC - Services in the Internal Market
• <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF>
- The Provision of Services Regulations 2009
http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092999_en.pdf
- Distributed Energy - Final proposals and Statutory Notice for Electricity Supply Licence Modification (Ref: 08/09), February 2009.
http://www.ofgem.gov.uk/Sustainability/Environment/Policy/SmallrGens/DistEng/Documents1/DE_Final_Proposals.pdf
- Electricity and gas interconnector licence - Guidance Document, April 2005
http://www.ofgem.gov.uk/Licensing/Work/Archive/11162_12105.pdf
- 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

1 Directive 2003/55/EC- Concerning Common Rules for the Internal Market in Natural Gas
http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&model=guicheti&numdoc=32003L0055&lg=en

2 Directive 2006/123/EC - Services in the internal market

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF>

3 The Provision of Services Regulations 2009

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092999_en.pdf

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Summary

This Guidance Document sets out the proposed revised procedures that we will follow when assessing applications for all types of gas and electricity licences. It also explains the process that follows a proposal by us not to grant a licence.

It should be noted that this Guidance Document is not applicable to applications for offshore transmission licences⁴

⁴ Applications for an offshore transmission licence (as defined by s6C(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

1. Introduction

Structure of this document

1.1. The rest of this document is structured in the following way:

- Chapter 2 - General procedures for assessing licence applications
- Chapter 3 - Supply licences
- Chapter 4 - Gas transporter, electricity distribution and transmission licences
- Chapter 5 - Interconnector licences, and
- Chapter 6 - Refusals and appeals procedure.

Legal framework

The Gas Act 1986 and the Electricity Act 1989

1.2. The principal objective of the Gas and Electricity Markets Authority ("the Authority") in carrying out its functions is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition⁵. The Authority must carry out its functions in the manner it considers is best calculated to further that principal objective having regard to a number of general statutory duties, including the need to:

- secure that licensees can finance their activities which are the subject of obligations under the Utilities Act 2000 or, as the case may be, the Gas Act 1986 or the Electricity Act 1989;
- secure that, all reasonable demands for gas and electricity are met; and
- have regard to the interests of particular customer groups, such as those with a disability, or those who are chronically sick.

1.3. The Gas 1986 and the Electricity Act 1989 (together "the Acts") make it an offence to carry out certain activities unless licensed or exempt from the requirement for a licence⁶. We can grant licences⁷ for the following activities:

- Supply licences - gas or electricity
- Network licences - gas transportation, electricity distribution and transmission
- Interconnector licences - gas or electricity
- Other licences - gas shipper and electricity generation

⁵ Gas Act 1986 s4AA and Electricity Act 1989 s3A

⁶ Gas Act 1986 s5 and Electricity Act 1989 s4

⁷ Gas Act 1986 s7& s7A and Electricity Act 1989 s6

1.4. The Acts also make it an offence for any person, in giving any information or making any application under part 1 of the Acts, to make any statement which is known to be false in a material particular, or to recklessly make any statement which is false in a material particular⁸.

The Application Regulations

1.5. The Application Regulations⁹ state the manner and form in which applications for gas and electricity licences must be made, the information they must contain, and the application fees. They apply to applications for:

- a licence;
- an extension of a licence; or
- a restriction of a licence

1.6. The Electricity Application Regulations also apply to applications for a modification of an area of a transmission licence. Modification of an area of a transmission licence is explained in more detail in Appendix 1.

Overall policy

1.7. The criteria in this document reflect the minimum criteria set out in the Application Regulations that have to be met by an applicant for a licence. These take into account:

- our duty to protect consumers, wherever possible by promoting effective competition;
- the fact that various industry codes and agreements set out in detail the industry processes to which a licensee must adhere; and
- our aim of minimising regulatory burden and maximising the opportunity for new applicants' to enter the market, including those based outside of Great Britain.

1.8. We recognise the need to encourage innovation and the fact that the structure of applicants' businesses will differ. The criteria therefore do not set out prescriptive standards which must be met, but indicate to applicants the nature of information that they are expected to supply and the manner in which this information will be assessed.

⁸ Gas Act 1986 s43 and Electricity Act 1989 s59

⁹ The Gas (Applications for Licences, Extensions and Restrictions of Licences) Regulations 2009 SI No 3190 and The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2009 SI No 3191

Compliance with licence conditions

1.9. Applicants must ensure that they have systems and procedures in place that will enable them to comply with all the conditions of the licence if it is granted. We would expect new licensees to comply fully with the provisions of the licence from the date it has been granted. Failure to comply with a condition of a licence may result in enforcement action by Ofgem.

1.10. Supply and network licence applicants are reminded that they are required to publish in plain and intelligible language statements setting out their obligations under those licence conditions relating to vulnerable customers¹⁰.

1.11. All the standard licence conditions may be viewed on our electronic Public Register via our website¹¹.

¹⁰ SLC26, SLC27 and SLC28 of gas and electricity supply licences. SLC 9 and 10 of the Electricity Distribution Licence and SLC 17, 18 and 19 of the Gas Transporter Licence.

¹¹ <http://epr.ofgem.gov.uk/index.php?pk=folder97241>

2. Assessing licence applications

→ This chapter describes the general procedures that we will follow when assessing licence applications.

Provision of information

2.1. The Application Regulations set out the information required to make a licence application and the manner and form in which it must be provided. The tables below illustrate the applicable parts of the Application Regulations and specify the relevant sections of this document that should be referred to for further information and details of any specific criteria for a particular licence type.

Gas licences

Licence type	Applicable parts of the Application Regulations and guidance		
	General criteria (App Regs) Schedule 1	Schedule 2	Specific criteria
Supply	<ul style="list-style-type: none"> ▪ General Particulars ▪ Details of Application ▪ Criminal Offences 	Part 1	None
Shipper		Part 2	None
Transporter		Part 3	<ul style="list-style-type: none"> ▪ Further information ▪ See pages 19 - 20
Interconnector		Part 4	<ul style="list-style-type: none"> ▪ Additional specific guidance ▪ See page 24 - 25

Electricity licences

Licence type	Applicable parts of the Application Regulations and guidance		
	General criteria (App Regs) Schedule 1	Schedule 2	Specific criteria
Supply	<ul style="list-style-type: none"> ▪ General Particulars ▪ Details of Application ▪ Criminal Offences 	Part 4	None
Generation		Part 1	None
Distribution		Part 3	<ul style="list-style-type: none"> ▪ SLC 31 (Undertaking from Ultimate Controller) and BA3 (Credit Rating of Licensee) ▪ SLC 8 ▪ See pages 20 - 22
Transmission		Part 2	<ul style="list-style-type: none"> ▪ Further information ▪ See pages 22 - 23

Interconnector		Part 5	<ul style="list-style-type: none"> ▪ Additional specific guidance ▪ See page 24 - 25
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2.2. In order to assess applications more efficiently, other than in exceptional circumstances (such as an urgent request for a temporary licence), we will not start to assess an application unless all the information required by the Application Regulations has been provided. In cases where insufficient information has been provided we will explain what more is required.

Application fees

2.3. The application fee applicable for each of the different licence types is set out in Schedule 3 of the Application Regulations and also given below.

Application type	Application fee
Electricity generation	£500
Electricity transmission	£500
Electricity transmission – modification of area	£250
Electricity distribution	£1400
Electricity distribution – extension or restriction	£150
Electricity supply – domestic	£450
Electricity supply – non-domestic	£450
Electricity supply – extension	£450
Electricity interconnector	£1050
Gas supply – domestic	£450
Gas supply – non-domestic	£450
Gas supply – (conveyed other than by gas transporter)	£350
Gas supply – extension	£450
Gas shipper	£350
Gas transporter	£1050
Gas transporter – extension or restriction	£150
Gas interconnector	£1050

Notice of application

2.4. All applicants¹² are required to make arrangements for a 28 calendar day notice of application to be published on either our website or on their own website within 10 days of receiving acknowledgement from us of a duly made application. Where an applicant decides to publish a notice on its own website, the applicant must provide us with the URL link to that notice.

¹² Applications for licences, extension or restriction of licences.

2.5. In addition, applicants for a restriction of a licence must also arrange for a notice to be published in such newspapers as are best calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates.

2.6. In all cases we can provide applicants with templates with suggested wording for the relevant application notice.

Time taken to grant licences

Time taken to grant supply, gas shipper, generation and interconnector licences

2.7. Our current target is to reach a decision on 100% of the following types of licence applications within 45 working days (the "Time Period")¹³ of receipt of an application that includes all the necessary supporting documentation and information¹⁴:

- Gas and electricity supply;
- Gas shipper;
- Electricity Generation; and
- Gas and Electricity Interconnector

2.8. It should be noted however, that the above Time Period applies to the grant of the licence only. For the avoidance of doubt, the Time Period does not, in the case of electricity supply and interconnector licences, apply to any decision relating to the issuing of a direction under SLC 11.3 of the electricity supply licence or exemptions from certain conditions of gas and electricity interconnector licences¹⁵.

Extensions to the Time Period for the grant of supply, gas shipper, generation and interconnector licences

2.9. The Time Period to reach a decision on whether or not to grant a licence of the above types may need to be extended where:

¹³ 45 working days Time Period to reach a decision on whether or not to grant a licence. The licence (in accordance with Regulation 19(5) of the Provision of Services Regulations 2009 and Article 13(4) of the EU Services Directive 2006/123/EC) being deemed to have been granted by tacit authorisation where a decision is not made within the Time Period.

¹⁴ This only applies to supply, gas shipping, electricity generation and interconnector licence applications and does not apply to gas transporter and electricity distribution licence applications or licence applications where modifications have been requested.

¹⁵ SLC 9, 10 and 11 of the Electricity Interconnector licence and SLC 10 and 11 of the Gas Interconnector licence.

- the application raises significant policy or consumer protection issues that require additional careful consideration.
- an applicant has requested modifications be made (on grant of licence)¹⁶ to any of the standard conditions of the licence being applied for. We are required to consult on the proposed modifications¹⁷.

2.10. It's likely that in such instances the Time Period will need to be extended to allow time for additional considerations and/or consultation¹⁸ before a decision on whether to grant or refuse the licence application can be made.

2.11. In all such cases we will contact the applicant as soon as reasonably practicable after receipt of the application or as soon as reasonably practicable after any policy or consumer protection issues are identified, with a view to extending the Time Period to allow sufficient time for us to properly consider the issues and consult where we deem it appropriate or are required¹⁹ to do so.

Time taken to grant Network licences (gas transporter, electricity distribution and transmission²⁰)

2.12. Unlike the other licence types, network licences can be issued to licensees that may currently have a monopoly interest in the gas or electricity network they own and operate. A network failure may have significant implications for consumers and other market participants and could ultimately threaten the security of supply of those connected to the network.

2.13. In order to protect consumers, it is therefore vital that, where appropriate, sufficiently robust arrangements are in place prior to licence grant, to ensure security of supply for consumers connected to the monopoly networks owned by network licence holders.

2.14. In view of the above, the Time Period to reach a decision on whether or not to grant a licence will not apply to network licence applications. Different arrangements²¹ apply for network licence applications. Further information on the criteria we will use to assess network licence applications may be found in chapter 4 below.

¹⁶ Under s8A(2) of the Electricity Act 1989 and s8(3) of the Gas Act 1986.

¹⁷ s8A(3) of the Electricity Act 1989 and s8(4) of the Gas Act 1986 require us to consult before making modifications to a licence on grant

¹⁸ Where we are required to consult or deem it appropriate to do so.

¹⁹ For example, s8A(3) of the Electricity Act 1989 and s8(4) of the Gas Act 1986 require us to consult before making modifications to a licence on grant.

²⁰ Not applicable to applications for an offshore transmission licence as defined by s6C(5) of the Electricity Act 1989.

²¹ Regulation 19 of the Provision of Services Regulations 2009 and Article 13(4) of the Directive allows for different arrangements to apply (instead of Tacit Authorisation) where it is justified in the public interest.

2.15. It should also be noted that before granting a gas transporter or electricity transmission licence we are required to publish a notice²² stating that we propose to grant the licence, the reasons why we propose to grant the licence and specifying the time within which any objections or representations may be made.

Delays in providing clarification or outstanding information

2.16. For all licence types, we are aware that in some cases where we have requested additional information or clarification, some licence applicants take a considerable amount of time to respond.

2.17. Such delays mean that in some cases, licence applications (particularly network licence applications) take far longer to process than they actually need to.

2.18. As stated in Chapter 6, we may refuse an application where an applicant has not provided any outstanding information within the required time. For clarity, applicants should note the following:

- where further information or clarification is required from applicants, we will agree with the applicant the timescales within which we expect the outstanding information to be submitted;
- failure to adhere to these agreed timescales may lead to a licence application being refused; and
- we do not expect any licence application to remain in progress for more than 1 year from the date it was acknowledged as a duly made application. Applications still pending after this time may be refused and the applicant asked to re-apply should they wish to do so.

Licence transfers

2.19. In considering whether to give consent to a proposed licence transfer we will apply the same criteria that we would apply if we were considering whether to grant a corresponding new licence to the proposed transferee²³.

2.20. In order for us to apply the same criteria, the proposed transferee must provide the same information in the form and manner set out in the Applications Regulations for the corresponding new licence.

2.21. Before giving consent to the transfer of a licence, we are required by the Acts to consult for a period of not less than 2 months on the proposed transfer²⁴.

²² s7(5) of the Gas Act 1986 and s6B(3) of the Electricity Act 1989. The notice period is not less than 2 months for gas transporter licence applications and not less than 28 days for electricity transmission licence applications.

²³ Gas Act 1986 s8AA(6) and Electricity Act 1989 s7A(6).

²⁴ Gas Act 1986 s8AA(9) and Electricity Act s7A(9).

Modification of an area, extension and restriction of existing licences

2.22. Applications for modification of an area (transmission licences only) and extensions or restrictions of licences must satisfy the requirements for information set out in the Application Regulations. However, information about the applicant's codes of practice²⁵ need not be submitted where that information would not, in any material respect, significantly differ from or add to the most recent information or documents provided.

2.23. We will use the criteria applicable to all application types and the relevant licence-specific criteria to assess applications for modifications of an area and for extensions and restrictions of licences. In determining an application for a modification, extension or restriction we will, where necessary, request any information which has not been submitted.

General Criteria

Criminal convictions

2.24. The Application Regulations require a declaration of unspent²⁶ criminal convictions relating to:

- the current directors of the applicant, including any shadow directors, or where applicable the corresponding officers of the company;
- the parent/ultimate holding company and its directors;
- any person who holds 20 per cent or more of any class of the shares of the applicant; and
- if the applicant is neither a body corporate nor a sole trader, the person(s) in whom effective control of the applicant rests.

Disqualified directors

2.25. The Application Regulations require all applicants to provide a statement on the extent to which any persons specified in the application are subject to disqualification to any extent from acting in connection with the affairs of a company.

2.26. We will refer to the statement provided and also check the Companies House website²⁷ and other available sources²⁸ to ensure that:

²⁵ No codes of practice need to be submitted for extensions to supply licences.

²⁶ "Unspent" under the Rehabilitation of Offenders Act 1974.

²⁷ The Disqualified Directors Register at <http://www.companieshouse.org.uk> and, where available, the equivalent online Disqualification Register in another jurisdiction.

²⁸ Including - The London, Edinburgh and Belfast Gazettes website at <http://www.gazettes-online.co.uk>.

- the directors (including shadow directors) of the applicant, or in the case of sole traders, the applicant, or, in the case of partnerships, the applicant and his/her partners;
- the directors of any parent/ultimate holding company of the applicant;
- major shareholders in the applicant; or
- any individuals with a controlling interest in the applicant.

are not disqualified.

2.27. Where there is evidence of disqualification. This may lead to a licence application being refused.

Insolvency

2.28. The concept of “insolvency” for the purpose of triggering our discretion to revoke a licence is defined in the revocation conditions²⁹. We may revoke a licence on insolvency grounds, on giving not less than 24 hours notice, if the licensee:

- is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to a higher threshold of £100,000 (as opposed to £750 under section 123 of the Insolvency Act 1986));
- has a receiver appointed;
- has an administration order made in relation to it;
- passes any resolution for its winding-up (unless we had previously approved such resolution), or
- becomes the subject of a winding-up order by the court.

2.29. On the first limb of the first insolvency trigger – the licensee is “unable to pay its debts” – we will wait for a formal determination³⁰ of insolvency as set out in the revocation conditions before deciding the matter. We cannot unilaterally and definitively determine whether or not a company is “unable to pay its debts” nor would we pre-empt the outcome of any formal insolvency steps by the company or its creditors.

2.30. Accordingly, we will apply the same tests outlined above to any application for a licence. In all cases we will check the Companies House web site and other available sources before granting a licence to check that the applicant is not insolvent.

The Insolvency Service website at <http://www.insolvency.gov.uk/> and the Registry of Judgments, Orders and Fines website at <http://www.registry-trust.org.uk/>.

²⁹ Schedule 2 of the relevant licence, paragraph 1(f).

³⁰ This includes a court decision, appointment of a receiver, or if a resolution for winding-up is passed by the company.

Previously refused applications and revoked licences

2.31. We will check to establish whether the applicant has previously had a licence application refused, or held a licence that has been revoked (other than by mutual agreement)³¹. In such cases, the reasons for application refusal or licence revocation will be considered to see if it is relevant to the decision to grant a licence.

Prohibited names³²

2.32. We consider it important that consumers and other market participants are protected from any confusion which may arise from the naming of "phoenix" companies³³ in the minority of cases where there is abuse of the phoenix company arrangements.

2.33. Where we suspect that an applicant may be using a prohibited name in breach of the Insolvency Act 1986 we will liaise with the relevant Insolvency Practitioner and, where appropriate, the Insolvency Service.

2.34. We will not grant a licence where there is a court decision³⁴ that an applicant is using a prohibited name in breach of the Insolvency Act 1986.

2.35. In addition, we shall ordinarily await the final outcome of any court proceedings to determine that question and/or pursuant to which a claimant has sought the leave of the court to use a prohibited name, before granting a licence to the applicant company.

Ability of licence holders to finance their activities

2.36. In carrying out our functions we must have regard to the need to secure that licensees are able to finance their activities which are the subject of obligations imposed³⁵.

³¹ Where the licence was not being used and the licensee has requested revocation of licence and we have agreed to that request.

³² For the purposes of this section, a name is a prohibited name in relation to such a person if- (a) it is a name by which the liquidating company was known at any time in that period of 12 months, or (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.' S216(2), The Insolvency Act 1986.

³³ A phoenix company is where the assets of one Limited Company are moved to another legal entity. Often some or all of the directors remain the same and in some cases, the new company has the same or a similar name. The Insolvency Act makes it an offence for a director of a company which has gone into insolvent liquidation to be a director of a company with the same or similar name, or be concerned in its management, without leave of the court within 5 years after winding up or the exceptions set out in section 216 of the Insolvency Act.

³⁴ Under the Insolvency Act there are certain exceptions on prohibited names and a court can grant leave making the use of a prohibited name lawful.

³⁵ Gas Act 1986 s4AA(2)(b) and Electricity Act 1989 s3A(2)(b)

2.37. However, there is no available check that we can conduct³⁶ on a potential licensee at the time of its licence application that will provide continuing comfort about financial viability once the licensee commences operations.

2.38. Where they exist, entry testing arrangements³⁷ provide a greater level of protection than any test that we could perform before granting a licence. The Application Regulations do not therefore require applicants to submit financial information or a statement of business proposals.

Specific criteria for different licensable activities

2.39. In addition to demonstrating compliance with the general criteria above, applicants need to demonstrate compliance with any specific criteria applicable to the type of licence applied for. These are set out in the following chapters:

- supply licences – chapter 3;
- network licences (gas transporter, electricity distribution and transmission) – chapter 4; and
- interconnector licences – chapter 5

2.40. There are no specific criteria for supply, shipper or electricity generation or applications other than the general criteria that all applicants must satisfy as set out in this chapter.

³⁶ Apart from checking with Companies House and other available sources that the applicant is solvent at the time of licence application which can only provide some assurance of the situation at the time of licence application and cannot provide any continuing comfort about future financial viability.

³⁷ entry testing arrangements under the various industry codes include credit rating, interoperability and disaster recovery.

3. Supply licences

This chapter describes our procedures for assessing supply licence applications. There are no specific additional criteria for supply licence applications

General supply licence issues

Statements relating to vulnerable customers

3.1. Supply licence applicants are reminded that they must comply with conditions from the date that a licence is granted, including the requirements to publish in plain and intelligible language statements setting out their obligations under those licence conditions relating to vulnerable customers³⁸.

Holding of other licences by supply licensees

3.2. We will check the following before granting a supply licence:

- gas supply licence applicants do not hold a gas transporter licence or a gas interconnector licence³⁹; and
- electricity supply licence applicants do not hold an electricity distribution licence or an electricity interconnector licence⁴⁰.

Premises and area to be supplied

3.3. An applicant may specify the type of premises or the area of the premises to be supplied. We will not grant a licence where, in our opinion, the description or area of the premises to be supplied would artificially exclude premises likely to be owned or occupied by persons who are chronically sick, have a disability, or who are of pensionable age, or who are likely to default in the payment of charges⁴¹.

³⁸ SLC26 (Services for specific Domestic Customer groups), SLC27 (Payments, Security Deposits and Disconnections), and SLC28 (Prepayment meters).

³⁹ Gas Act 1986 s7(3) and s7A(3)

⁴⁰ Electricity Act 1989 s6(2) and s6(2A)

⁴¹ Gas Act 1986 s7A(8) - Although there is no corresponding provision in the Electricity Act 1989. In order to protect customers and in line with our policy to align the gas and electricity markets wherever possible, we have extended this provision to apply to electricity supply licences.

Extension or Restriction of a supply licence

3.4. We will apply the same criteria when assessing an application for an extension or restriction of a supply licence as those used to assess an application for a supply licence.

3.5. In addition, because it is important that any restriction does not leave consumers without a supply, we will check that proposals for ensuring continuity of supply are sufficient⁴² to:

- notify existing and affected consumers of the effects of any restriction;
- secure alternative supply for affected consumers on the same terms as nearly as is possible to the existing contract; and
- ensure that any prospective supplier is licensed.

3.6. We will not grant an extension or restriction where, in our opinion, the description or area of the premises to be supplied would artificially include in the restriction or exclude from the extension, premises likely to be owned or occupied by persons who are chronically sick, have a disability or are of pensionable age, or who are likely to default in the payment of charges⁴³.

Gas supply through exempt pipelines

3.7. We will notify the Health and Safety Executive (HSE) of any application we receive for licences authorising the supply of gas through exempt pipelines⁴⁴. In addition to meeting the general criteria as set out in Chapter 2, we will seek confirmation from that applicant that it has secured approval of, or is in discussions with, the HSE regarding a gas safety case.

Additional specific guidance for electricity supply licence applicants seeking a direction under SLC 11 (Compliance with codes)

3.8. In March 2009, as part of our work on identifying and reducing the regulatory barriers to the development of Distributed Energy (DE), we modified Condition 11 (Compliance with Codes) of the standard conditions applicable to electricity supply licence.

⁴² Gas Act 1986 s7A(9) - Although there is no corresponding provision in the Electricity Act 1989. In order to protect customers and in line with our policy to align the gas and electricity markets wherever possible, we have extended this provision to apply to electricity supply licences.

⁴³ Gas Act 1986 s7A(8) - Although there is no corresponding provision in the Electricity Act. In order to protect customers and in line with our policy to align the gas and electricity markets wherever possible, we have extended this provision to apply to electricity supply licences.

⁴⁴ Where a gas network is exempt from the requirement to hold a gas transporter licence. For example, caravan parks or Local Authorities that supply gas to premises via their own private network.

3.9. The modification allows existing and prospective electricity supply licensees to apply to the Authority for a direction under SLC 11.3 of the electricity supply licence relieving it of certain obligations (in whole or in part) to comply with specified industry codes.

3.10. We have published guidance⁴⁵ outlining the procedures for requesting a direction under SLC 11.3 as well as the eligibility and assessment criteria we will use to assess applications for a direction under SLC 11.3 of the electricity supply licence.

3.11. Applicants seeking a direction under SLC 11.3 are encouraged to refer to this guidance as it is intended to help suppliers seeking a direction better understand the relevant requirements.

3.12. For the avoidance of doubt, it should be noted that the Time Period of within which we aim to reach a decision on whether or not to grant an electricity supply licence does not include making any decision on whether or not to issue a direction under SLC 11.3.

⁴⁵ Appendix 3 of Distributed Energy - Final proposals and statutory notice for electricity supply licence modification. (Ofgem Ref: 08/09) February 2009.
http://www.ofgem.gov.uk/Sustainability/Environment/Policy/SmallGens/DistEng/Documents1/DE_Final_Proposals.pdf

4. Network licences

→ This chapter describes the specific criteria (in addition to the general criteria set out in chapter 2) against which we will assess an application for a gas transporter licence, an electricity distribution or transmission licence⁴⁶.

General network licence issues

Statements relating to vulnerable customers

4.1. Network licence applicants are reminded that they must comply with conditions from the date that a licence is granted, including the requirements to publish in plain and intelligible language statements setting out their obligations under those licence conditions relating to vulnerable customers⁴⁷.

Holding of other licences by network licensees

4.2. We will check the following before granting a network licence, namely that:

- gas transporter licence applicants do not hold any other type of gas licence⁴⁸,
- electricity distribution licence applicants do not hold an electricity supply licence or an electricity interconnector licence⁴⁹, and
- electricity transmission licence applicants do not hold an electricity interconnector licence⁵⁰.

Safe operation of transportation and distribution systems

4.3. We will, where appropriate, consult the Health and Safety Executive (HSE) about safety issues contained in information submitted by applicants for gas transportation and electricity distribution licences. We will also consult the HSE about any other safety matters⁵¹.

4.4. An applicant for an electricity distribution or gas transporter licence is not required to submit information about the safe operation of its proposed system.

⁴⁶ Not applicable to applications for an offshore transmission licence as defined by s6C(5) of the Electricity Act 1989.

⁴⁷ Conditions 9 and 10 of the Electricity Distribution Licence and conditions 17, 18 and 19 of the Gas Transporter Licence.

⁴⁸ Gas Act 1986 s7(3) and s7A(3).

⁴⁹ Electricity Act 1989 s6(2) and s6(2A).

⁵⁰ Electricity Act 1989 s6(2A).

⁵¹ Gas Act 1986 s4A(1).

However, we will take into account any comments made by the HSE about whether it considers the system can be operated safely.

Extension or Restriction of a network licence

4.5. We will apply the same criteria when assessing an application for an extension or restriction of a network licence as those used to assess an application for a network licence.

4.6. In addition because it is important that any restriction does not leave consumers without a connection we will check that the applicant's proposals for ensuring consumers remain connected are sufficient.

4.7. We will therefore, when assessing an applicant's proposals to ensure consumers have a connection, check that the proposed arrangements are sufficient to:

- notify affected consumers of the effects of any restriction;
- notify existing suppliers of the effects of any restriction;
- ensure that arrangements have or will be made to secure alternative connection for affected consumers; and
- ensure that any prospective transporter or distributor is licensed.

Notice of proposed grant of gas transporter and electricity transmission licences

4.8. In accordance with the statutory requirement, we will, where we propose to grant a gas transporter or electricity transmission licence, publish a notice stating the reasons why we propose to grant the licence and giving 2 months notice (in the case of gas transporter licences) and 28 days notice (in the case of the electricity transmission licences) for any representations to be made⁵².

4.9. Where we receive representations about a proposal to grant a gas transporter licence or electricity transmission licence we will consider whether they are relevant to the criteria used to assess the application and if necessary the application may be re-assessed.

Time taken to grant network licences

4.10. We aim to grant a network licence as soon as reasonably practicable after all relevant information has been provided and assessed and all relevant requirements have been satisfied.

⁵² Gas Act 1986 s7(5) & Electricity Act 1989 s6B(3).

Specific criteria for gas transporter licence applications

4.11. All Gas Transporters, other than the National Transmission System (NTS) and Gas Distribution Networks, are known as Independent Gas Transporters (IGTs).

SLC 8 (Provision and Return of Meters)

4.12. Applicants should note that once licensed, in order to comply with the requirements of this condition they will need to become an accredited Meter Asset Manager (MAM) or appoint a service provider who is accredited.

Charges and financial ring-fencing provisions

4.13. On grant an IGT licence will not have the Relative Price Control (RPC) conditions⁵³ included in the licence. In addition, the financial ring fencing conditions contained within Section C of the standard licence conditions (the financial ring-fencing conditions) will not have effect in the licence.

4.14. Following grant of an IGT licence, we will consult on and seek the consent of the licensee to insert a special condition and modify the standard licence conditions of the licence granted to the applicant⁵⁴, so as to include the RPC conditions in order to bring any new IGT licence into line with existing Gas Transporter licensees.

4.15. Under the terms of the RPC mechanism⁵⁵, IGTs charges are capped at a level that is broadly consistent with the charges that the Distribution Network would levy for providing similar gas transportation services.

4.16. Following grant of an IGT licence, we will also seek the licensee's consent to issue a Transportation Services Direction⁵⁶ to give effect to the financial ring-fencing conditions.

4.17. As of March 2006, all IGTs have the financial ring-fencing conditions⁵⁷ in effect in their licence following issue of Transportation Services Directions to those licensees. The financial ring-fencing conditions cover:

- restrictions on activity;

⁵³ New Special Condition 1 and amended standard conditions 4A (the RPC Conditions).

⁵⁴ Under s23(1) of the Gas Act.

⁵⁵ See The Regulation of Independent Gas Transporter Charging: Final Proposals. Decision document. July 2003. Ofgem. 64/03.

http://www.ofgem.gov.uk/Networks/GasDistr/IGTReg/Documents1/3946-Decisiondoc_IGT_Final_Proposals.pdf

⁵⁶ By Direction under standard condition 2 of the gas transporter licence.

⁵⁷ Financial ring-fencing for new and existing independent gas transporters. Final Proposals. September 2005. Ofgem. 209/05.

<http://www.ofgem.gov.uk/Networks/GasDistr/IGTReg/Documents1/11641-20905.pdf>

- the availability of adequate resources;
- an undertaking from their ultimate controller;
- the obtaining of a suitable investment grade credit rating⁵⁸; and
- indebtedness of the licensee.

4.18. While applicants do not have to provide details of their proposed arrangements for compliance with these conditions as part of the application process, applicants should discuss their proposed arrangements for compliance with these conditions (should they be given effect in the licence) with us at the earliest opportunity.

4.19. In the event that the RPC and financial ring-fencing conditions are given effect in the licence after the licence has been granted we would expect licensees to comply with the applicable requirements of these conditions.

4.20. For clarity, modifications⁵⁹ relating to the following licence conditions in gas transporter licences will apply to new IGTs following the issue of a Transportation Services Direction.

- Condition 17 (Provision of services for specific domestic customer groups);
- Condition 18 (Arrangements for access to premises);
- Condition 19 (Procedure for dealing with complaints);
- Condition 21 (Reporting on performance); and
- Condition 22 (Provision of information during unplanned interruptions)

Specific criteria for electricity distribution licence applications

4.21. All Electricity Distribution Network Operators other the incumbent Distribution Network Operators (DNOs) are known as Independent Distribution Network Operators (IDNOs).

SLC 8 (Safety and Security of Supplies Enquiry Service)

4.22. Applicants must, as part of their licence application, provide details of their proposed arrangements for compliance with this condition. These must be approved by us before a licence is granted.

4.23. During the assessment of the applicant's proposals we will consider whether they demonstrate that:

⁵⁸ or Alternative Arrangements with the prior permission of the Authority.

⁵⁹ Modification dated 31 March 2008.

<http://www.ofgem.gov.uk/Networks/GasDistr/GDPCR7-13/Documents1/SLCs%20IGT%20only%20-%20SLCs%20-%2017,19,21,22,44,46.pdf>

- the service adequately differentiates between enquiries relating to security, availability and quality of service of the licensee's distribution system, or concerning danger or requiring urgent attention, and other enquiries. It is important to ensure that the efficiency of the service will not suffer due to large numbers of other enquiries;
- if any part of the establishment, operation, and maintenance of the service is to be procured from another organisation, the applicant must demonstrate that the contractual arrangements are adequate and the organisation has the capability to provide a satisfactory service;
- the service should be available through a wide range of communication media. These must include telephone, correspondence and personal visit. It would also be desirable for them to include Internet and e-mail facilities. All relevant addresses and telephone numbers must be included in the statement required by SLC 8;
- the service must provide a telephone response service that is able to receive and process reports and enquiries at all times. Where companies operate an automated telephone answering service, simple and swift access to an operator must be available at all times. The service shall include facilities that can be used by all classes of consumer, including the disabled and the elderly, and shall be free at the point of use; and
- the service should be equally effective in responding to reports and enquiries that are received direct from consumers and those received via supply businesses. The arrangements should not discriminate between reports and enquiries received via different suppliers.

Financial ring-fencing and alternative arrangements

4.24. Schedule 2, part 2, paragraph 4 of the Application Regulations require that applicants must provide details of their proposed arrangements for compliance with the applicable requirements of any modifications that the Authority has indicated it proposes to make to the standard licence conditions prior to the granting of a licence.

4.25. In order to protect electricity customers, the Authority hereby indicates, for the purposes of schedule 2, part 2, paragraph 4 of the Application Regulations, that it proposes to make modifications to the standard conditions of distribution licences prior to granting such licences. The modifications reflect the expectation that the standard conditions in Section B of the distribution licence will not be in effect for new applicants and that certain amended standard conditions will be inserted in an additional Section BA. The amended standard conditions refer to:

- the regulation of charging arrangements;
- credit rating of licensee; and
- restriction on indebtedness and transfers of funds.

4.26. Following consultation on this proposed modification, we may modify the standard licence conditions in the applicant's licence to such extent as we consider requisite to meet the circumstances of the particular case⁶⁰.

4.27. The applicant will need to provide details of their proposed arrangements for compliance with these amended standard conditions as part of their application.

4.28. The Authority will need to be satisfied with the applicants proposed arrangements to comply with SLC 31 (Undertaking from Ultimate Controller) and proposed amended standard condition BA3 (Credit Rating of Licensee).

4.29. We have published guidance⁶¹ on alternative arrangements that might better suit the circumstances of smaller companies in complying with the proposed modified licence condition relating to the Credit Rating of the Licensee. We have also published a decision document that sets out the appropriate long term regulatory regime for IDNOs and incumbent DNOs operating outside their distribution services area⁶².

4.30. In order for a distribution licence to be granted, an applicant must satisfy the requirements of SLC31 and the proposed amended standard condition BA3 (Credit Rating of Licensee).

Further information for electricity transmission licence applicants

Extent of participation in transmission

4.31. It should be noted that this Guidance Document is not applicable to applications for offshore transmission licences⁶³.

4.32. The current regulatory arrangements relate to the presence of a single system operator acting on a GB wide basis. Where we intend to grant a licence to an applicant allowing them to undertake system operation activities in a particular area it would be necessary to make changes to the current regulatory arrangements to facilitate this.

⁶⁰ Electricity Act 1989 s8A(2).

⁶¹ Financial Ring Fencing Alternative Arrangements for New Independent Distribution Network Operators, Open Letter, 29 July 2004
http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/8017_Alternative_arrangements_update_final.pdf.

⁶² Regulation of Independent Electricity Distribution Network Operators, 26 July 2005. (Ofgem Ref: 176/05)
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=2&refer=Networks/ElecDist/Policy/IDNOs>

⁶³ Applications for an offshore transmission licence (as defined by s6C(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.

4.33. For applicants seeking to undertake transmission ownership activities, we will, in assessing an application, consider whether the activities the applicant wishes to undertake are currently undertaken by another transmission licensee in that particular area.

4.34. Where we intend to grant a licence to an applicant allowing transmission ownership activities to be undertaken in an area currently covered by another transmission licensee's licence, we may seek to modify the incumbent transmission licensee's licence to remove that area from the incumbent's licence.

Standard licence conditions in transmission licences

4.35. An applicant for a transmission licence will have conditions in effect in its licence according to the activities it plans to undertake.

4.36. An applicant who wishes to act as a transmission owner will have the following sections in effect in its licence:

- Section A. Interpretation, application and payments;
- Section B. General; and
- Section D. Transmission owner standard conditions.

4.37. An applicant who wishes to act as a system operator will have the following sections in effect in its licence:

- Section A. Interpretation, applications and payments;
- Section B. General; and
- Section C. System operator standard conditions.

Modification of an electricity transmission licence

4.38. We will apply the same criteria when assessing an application for modification of an electricity transmission licence as those used in the assessment of an application for a licence.

4.39. In addition, because it is important that any modification of an area does not affect the operation of the National Electricity Transmission System we will take into consideration whether the proposed modification would affect persons connecting to the National Electricity Transmission System.

5. Interconnector licences

→ This chapter describes specific criteria (in addition to the general criteria set out in chapter 2) against which we will assess applications for gas or electricity interconnector licences.

Holding of other licences

5.1. We will check the following before granting an interconnector licence, namely that:

- electricity interconnector licence applicants do not hold any other electricity licence⁶⁴; and
- gas interconnector licence applicants do not hold any other gas licence⁶⁵.

Additional specific guidance

Third party access and exemption from certain requirements

5.2. We have published a guidance document outlining the procedures that we intend to follow in respect of considering whether to switch on, or switch off, some or all relevant standard licence conditions, thereby giving effect to an exemption from the EU legislation requiring third party access⁶⁶.

5.3. Interconnector licence applicants are encouraged to refer to this guidance as it is intended to help market participants better understand the requirements contained in the gas and electricity interconnector licence. The guidance:

- further describes the meaning of key concepts as detailed within the licence (such as participation in the operation of an interconnector);
- outlines the procedure that we intend to follow when assessing methodology statements; and
- outlines the procedure that we will follow when considering whether to give an interconnector operator an exemption from certain requirements of the Gas Directive and Electricity Directive and Regulation, which are reflected in the gas and electricity interconnector licences.

5.4. The guidance should be read in conjunction with the standard licence conditions of the gas or electricity interconnector licence.

⁶⁴ Electricity Act 1989 s6(2A)

⁶⁵ Gas Act 1986 s7(3)

⁶⁶ Electricity and gas interconnector licence - Guidance Document (April 2005)
http://www.ofgem.gov.uk/Licensing/Work/Archive/11162_12105.pdf

5.5. The guidance will be kept under review and may be updated from time to time. Any updates will be published on our website.

5.6. For the avoidance of doubt, it should be noted that the Time Period within which we aim to reach a decision on whether or not to grant an interconnector licence does not include making a decision on whether or not to grant an exemption from some or all of the relevant conditions mentioned above.

Proposed points of connection

5.7. In November 2007, we published an open letter⁶⁷ clarifying our position regarding the requirement in the Electricity Application Regulations for licence applicants to specify the actual or proposed point of connection for a proposed interconnector.

5.8. Applicants must, wherever possible, specify the locations of the actual substations⁶⁸ at which the interconnector will be connected to an electricity transmission or distribution network.

⁶⁷ Open Letter- Interconnector licence applications. 19 November 2007. Ofgem.
<http://www.ofgem.gov.uk/Licensing/Work/Documents1/Open%20letter%20interconnector.pdf>

⁶⁸ Or Ordinance Grid Survey Reference coordinates encompassing the proposed points of connection where the substation is yet to be built .

6. The refusal and appeals procedure

→ This chapter describes the procedure that we intend to follow if we propose to refuse an application for a licence or for an extension or restriction of a licence⁶⁹.

Proposal to refuse an application

6.1. We may propose to refuse an application where, amongst other things:

- the grant of a licence may conflict with our principal or general statutory duties
- any person(s) named in the application are disqualified to any extent from acting in connection with the affairs of a company;
- any person(s) named in the application are undischarged bankrupts,
- any person(s) or entity named in the applications has an unspent criminal conviction;
- the applicant has previously had a licence application refused or a licence revoked;
- the applicant is insolvent⁷⁰;
- where there is a court decision⁷¹ that an applicant is using a prohibited name in breach of the Insolvency Act 1986; and
- we consider information supplied to be false or misleading,
- the applicant has failed to provide, when requested, additional information within the required time.

Notification of proposed refusal

6.2. If we propose to refuse an application the reasons will be given to the applicant in a notice which explains what further information, if any, is needed. The notice will:

- state that we propose to refuse the application;
- state the reasons why we propose to refuse the application; and
- specify the time within which representations may be made.

6.3. We will allow the applicant 21 days from the date of the notice to make representations about why it disagrees with our proposal to refuse the application and to provide further information if required. We will consider any representations which are duly made and not withdrawn.

⁶⁹ And for the modification of an area of a licence in the case of a transmission licence.

⁷⁰ Within the meaning of the revocation conditions in Schedule 2 of a licence.

⁷¹ Under the Insolvency Act there are certain exceptions on prohibited names and a court can grant leave making the use of a prohibited name lawful.

Final decision to refuse an application

6.4. Should no representations have been made within 21 days of the notice or if after considering any representations made the Authority is still of the view that the application should be refused, the applicant will be notified in writing of the decision to refuse the licence. The notification will:

- where no representations have been made, restate the reasons for the refusal of the application; and
- where representations were made, state the reasons for the refusal of the application, referring to the representations made where appropriate.

Notification to the European Commission

6.5. We will forward to the Commission all refusals to grant gas licences together with the reasons given and details of any unsuccessful appeals.

Appendix 1 – The licensing system

Gas licences

1.1. The Gas Act 1986 prohibits⁷² certain activities unless they are licensed or exempt from the requirement to be licensed. Ofgem can grant licences for:

- gas transportation;
- gas shipping;
- gas supply; and
- gas interconnectors.

Gas transporter licence

1.2. A gas transporter's licence allows the licensee to:

- convey gas through pipes to any premises within an area specified in the licence held by the gas transporter; and
- convey gas through pipes to any pipeline system operated by another gas transporter, or to any other pipeline system specified in the licence⁷³.

Gas shipper licence

1.3. A gas shipper's licence allows the licensee to arrange with any gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter, either generally or for purposes connected with the supply of gas to any premises specified in the licence⁷⁴.

Gas supplier licence

1.4. A gas supplier's licence allows the licensee to supply to any premises gas which has been conveyed to those premises through pipes⁷⁵. A supply licence may authorise the holder to supply gas to non-domestic premises or to domestic and non-domestic premises⁷⁶.

⁷² Gas Act 1986 s5.

⁷³ Gas Act 1986 s7(2).

⁷⁴ Gas Act 1986 s7A(2).

⁷⁵ Gas Act 1986 s5(1).

⁷⁶ Domestic premises are premises used wholly or mainly for domestic purposes.

Gas interconnector licence

1.5. A gas interconnector licence allows the licensee to participate in the operation of a gas interconnector⁷⁷.

1.6. Participating in the operation on a gas interconnector is defined as:

- co-ordinating and directing the conveyance of gas into or through a gas interconnector; or
- making such an interconnector available for use for the conveyance of gas⁷⁸.

Electricity licences

1.7. The Electricity Act 1989 prohibits⁷⁹ certain activities unless licensed or exempt from the requirement to be licensed. Ofgem can grant licences for:

- electricity generation;
- participation in transmission;
- electricity distribution
- electricity supply; and
- electricity interconnectors.

Electricity generation licence

1.8. An electricity generator's licence allows the licensee to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be given⁸⁰.

Electricity transmission licence

1.9. An electricity transmission licence allows the licensee to participate in the transmission of electricity for the purpose of enabling a supply to be given⁸¹.

1.10. A person who participates in the transmission of electricity is a person who:

- co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place; or
- makes available for use for the purposes of such a transmission system anything which forms part of it.

⁷⁷ Gas Act 1986 s7ZA.

⁷⁸ Gas Act 1986 s5(6).

⁷⁹ Electricity Act 1989 s4.

⁸⁰ Electricity Act 1989 s6(1)(a).

⁸¹ Electricity Act 1986 s6(1)(b).

1.11. It is not necessary for a person to undertake both elements in order to be undertaking a licensable activity and therefore to require a licence.

1.12. Transmission in relation to electricity means to transmit by means of a transmission system⁸². A transmission system consists (wholly or mainly) of high voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.

1.13. The Authority can, with the consent of the licensee, modify the area of a transmission licensee's licence⁸³.

Electricity distribution licence

1.14. An electricity distribution licence allows the licensee to distribute electricity for the purpose of enabling a supply to be given⁸⁴. Distribute means distribute by means of a distribution system⁸⁵. A distribution system consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system.

Electricity supplier licence

1.15. An electricity supplier's licence allows the licensee to supply electricity to premises⁸⁶. Supply in relation to electricity means supply of electricity conveyed by a distribution system to premises other than premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on⁸⁷.

1.16. A supplier's licence may authorise the holder to supply electricity:

- to any premises;
- only to premises specified in the licence, or to premises of a description so specified; or
- only to any premises situated in a specified area, or to premises of a specified description which are so situated.

⁸² Electricity Act 1989 s4(4).

⁸³ Not applicable to offshore licences as defined by s6C(5) of the Electricity Act 1989.

⁸⁴ Electricity Act 1989 s6(1)(c)).

⁸⁵ Electricity Act 1989 s4(4).

⁸⁶ Electricity Act 1989 s6(1)(d).

⁸⁷ Electricity Act 1989 s4(4).

Electricity interconnector licence

1.17. A electricity interconnector licence allows the licensee to participate in the operation of an electricity interconnector⁸⁸.

1.18. Participating in the operation on an electricity interconnector is defined as:

- co-ordinating and directing the flow of electricity into or through an electricity interconnector; or
- making such an interconnector available for use for the conveyance of electricity⁸⁹.

⁸⁸ Electricity Act 1989 s6(1)(e).

⁸⁹ Electricity Act 1989 s4(3C).

Appendix 2 - The Application Regulations 2009

The Applications Regulations will shortly be available for download from our website or from the website of the Office of Public Sector Information (OPSI) at <http://www.opsi.gov.uk/stat>:

Statutory Instrument 2009 No. 3190: The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2009, at:

Statutory Instrument 2009 No. 3191: The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2009.)