

Guidance

Comments and Representations on Licence Applications

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This document is intended for individuals who wish to understand when and how they can provide comments or representations on licence applications submitted to Ofgem. It explains the role these submissions play in our assessment processes and the types of comments and representations we can and cannot consider.

This guidance is not intended to serve as a definitive explanation of our application processes and does not constitute legal advice. For a more detailed understanding, please refer to our [licence application guidance](#).

Where there is ambiguity between this guidance, the Application Regulations and the Acts, the Application Regulations and the Acts take precedence.

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1. Introduction

What Ofgem does

- 1.1 The Office of Gas and Electricity Markets (Ofgem) is the independent energy regulator for Great Britain (“GB”). As a non-ministerial government department, we work to protect energy consumers by ensuring fair treatment and support the transition to a cleaner, greener energy system.
- 1.2 To operate in the GB energy industry, companies usually need a licence which sets out the rules for how they must operate. We develop these rules, monitor company performance, and take action when they are not followed.

Our licence application process

- 1.3 Anyone wishing to apply for a licence must submit an application using the prescribed [application form](#). That application is then assessed by Ofgem in accordance with the statutory requirements and our published guidance.
- 1.4 We will grant a licence if our checks and assessments against the relevant criteria are satisfactory, the notice of application comment period has ended, and we consider that no outstanding issues remain.
- 1.5 Further details about our licence application processes and procedures are set out in our [licence application guidance](#). However, the legal requirements are set out in specific legislation (the “Acts”):
 - [Gas Act 1986 \(legislation.gov.uk\)](#)
 - [Electricity Act 1989 \(legislation.gov.uk\)](#)
- 1.6 There are also specific statutory instruments (the “Applications Regulations”):
 - [The Gas \(Applications for Licences and Extensions and Restrictions of Licences\) Regulations 2019](#)
 - [The Electricity \(Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences\) Regulations 2019](#)

When Ofgem invites input on applications

- 1.7 Ofgem invites input on licence applications in the following circumstances:
 - **For new applications**, we ordinarily provide a non-statutory opportunity for stakeholders and interested parties to submit comments when we publish a notice of application. Further information is set out in Appendix 1.
 - **For certain applications we are minded to grant**, we are required by statute to invite representations. Further information is set out in Appendix 2.

2. Considering comments and representations

Section summary

This section explains the role of comments and representations in our licence application assessment process, how we review and consider them, and how they may inform our decision. It also explains what application information we can disclose.

The purpose of comments and representations

- 2.1 We have a defined set of criteria which we use to determine an application which are set out in more detail in our [licence application guidance](#). We invite comments and representations relevant to those criteria as part of our application assessment process to assist us in determining applications.
- 2.2 The purpose of public involvement in our processes is specifically to alert us to matters relevant to our assessment criteria which we will consider alongside the information provided by the applicant and the result of our own enquiries and due diligence.

How we consider comments and representations

- 2.3 We will initially review any comments or representations received during the submission period for the relevant notice, provided they have not been withdrawn by the correspondent. This review is to determine if, in our reasonable opinion, the comments or representations are ‘valid’ in accordance with the criteria set out in Section 4 of this document.
- 2.4 When we receive high volumes of correspondence, we may use technological solutions to support this review.
- 2.5 Where valid concerns have been raised, we will assess whether they require further investigation and may ask the applicant to respond to us directly on these. Alternatively, we may determine that the points raised can be considered without further investigation, as part of our overall risk assessment and decision-making process.
- 2.6 Once we are satisfied that any issues have been addressed, we will decide whether to grant the licence, taking into account all valid points raised, including those identified through our own enquiries.

The outcome of our application assessment process

- 2.7 If having completed our assessment we decide to grant a licence, a notice of licence grant and relevant documents relating to the licence will be published on the [Electronic Public Register \(ePR\)](#).

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- 2.8 Once a licence has been granted, the applicant becomes a licensee and is required to comply with the conditions of their licence from the date it is granted. If they fail to meet those conditions, we have powers under Sections [28-30F of the Gas Act 1986](#) and Sections [25-27F of the Electricity Act 1989](#) to take compliance and enforcement action for breach of their licence. In addition, all licences contain terms under which Ofgem may revoke them.
- 2.9 If the result of our checks and assessments against the relevant criteria is not satisfactory and we propose to refuse the licence application, this will be communicated to the applicant directly. Applicants who are refused a licence are not prevented from reapplying at a later date.

Application documents that can be disclosed

- 2.10 We understand that interested parties may wish to see documents relating to a particular application, including the application itself. However, in most cases we are legally prevented from sharing such information and only the published notice of application can be provided.
- 2.11 [Section 105\(3\) of the Utilities Act 2000](#) sets out the limited number of gateways that would facilitate disclosure of such information.

3. Submitting comments and representations

Section summary

This section explains how to submit comments or representations on licence applications. To be considered, they must be sent to the designated Ofgem email address within the submission period and clearly reference the relevant application.

How to submit comments and representations

- 3.1 All comments and representations should be emailed to licensing@ofgem.gov.uk making clear which application or proposed licence they relate to. Where Ofgem has provided an application reference number, this should also be used.
- 3.2 If these are sent to an alternative email address such as those of specific Ofgem employees, it may not be possible for them to be considered.
- 3.3 Comments and representations must be received within the given submission period. If received after that time, it is unlikely that they will be considered. This is because we have to undertake our processes in line with the published statutory timescales set out in our [licence application guidance](#).
- 3.4 If a respondent wishes to withdraw any comment or representation, they must email us at licensing@ofgem.gov.uk during the submission period to confirm its withdrawal, including a copy of the original comment or representation.

Acknowledgment of receipt

- 3.5 We may acknowledge individual comments and representations received. However, each email received will generate an auto-acknowledgement and in most cases, this will be the only acknowledgement provided.
- 3.6 We do not generally acknowledge comments or representations that come via other means such as post. However, we do review all comments and representations received to determine if they are valid.

Responding to and publishing comments and representations

- 3.7 As the purpose of inviting comments and representations is to inform the assessment of an application, Ofgem does not routinely respond to these. In most cases, when considering an application, it is sufficient to consider the comments or representations relevant to our assessment, without response.
- 3.8 When we publish a notice of grant, we will usually advise how many comments or representations have been received and confirm that these have been considered as part of our determination. However, we will not generally publish the individual comments, representations or any objections made.

4. Comments and representations we can consider

Section summary

This section outlines the types of comments and representations Ofgem can and cannot consider during its assessment of licence applications. Only those that directly relate to Ofgem's assessment criteria are valid and can be considered.

What we can consider

- 4.1 We can only consider comments and representations made in writing which have not been withdrawn, and that directly relate to one or more of the assessment criteria outlined below. Those that meet these criteria are referred to as 'valid' comments or representations.

Whether the application is consistent with our regulatory responsibilities

- 4.2 As part of our assessment, we consider whether granting a licence to an applicant would be consistent with our regulatory and statutory duties. This includes evaluating whether issuing the licence would conflict with our principal objective or wider regulatory responsibilities.
- 4.3 Ofgem's principal objective is to protect the interests of existing and future consumers in relation to gas and electricity supply, including promoting their interests in the reduction of greenhouse gases and the security of supply. To achieve this, Ofgem is generally required to promote effective competition across the regulated energy markets.
- 4.4 In carrying out its duties, Ofgem must have regard to the need to ensure that all reasonable demands for gas and electricity in GB are met where economically feasible, that licence holders are able to finance their regulated activities, and the need to contribute to achieving sustainable development.

Whether the applicant is suitable to hold a licence

- 4.5 To protect the interests of current and future consumers, we will consider whether the applicant is suitable to hold the licence it has applied for.
- 4.6 This involves reviewing any relevant disclosures or adverse information related to the applicant's directors, major shareholders, individuals with effective control, and those in significant managerial roles, including directors of any parent or holding companies.
- 4.7 The requirements in this regard are set out in Section 10 of the [application form](#) and are summarised in chapter six of our published [licence application guidance](#).

Whether the applicant is ready to be granted a licence

- 4.8 Ofgem evaluates whether the applicant demonstrates a clear understanding of the steps required to begin its proposed licensable activities.
- 4.9 This includes reviewing the applicant's plans, supporting evidence, and their understanding of the steps needed to meet their obligations from when a licence is granted.
- 4.10 The requirements in this regard are set out in Section 11 of the [application form](#) and are summarised in chapter six of our published [licence application guidance](#).

Whether any relevant licence-specific criteria have been met

- 4.11 Some licences include specific criteria that form part of the assessment process. These requirements are outlined in the relevant [application form](#), with further detail provided in our published [licence application guidance](#).
- 4.12 Where licence-specific requirements apply, the applicant must demonstrate that these have been met, or that they will be met, to provide assurance that granting the licence is appropriate.

What we cannot consider

- 4.13 We cannot consider any comments or representations that do not relate to the criteria Ofgem uses to assess applications. Such submissions are deemed 'invalid' and will not form part of our assessment process.
- 4.14 Matters we cannot consider also include the following:
- **Not relating to our regulatory powers:** like the other independent regulators in the UK, Ofgem has distinct legal responsibilities and can only act within its statutory powers. Matters such as location or health and safety are the responsibility of other bodies like Local Planning Authorities, Building Control, or the Health and Safety Executive and cannot be considered by us.
 - **Vexatious submissions:** submissions that, in our reasonable opinion, are intended to disrupt the licensing process rather than to legitimately inform the assessment of an application will not be considered. This includes unreasonable or unsubstantiated allegations and comments that are, obscene, offensive, threatening or otherwise harmful.
 - **Strength of feeling:** we recognise that some parties might hold strong views about projects associated with a licence application. However, the extent of support for, or opposition to, a project is not relevant to our assessment criteria. The assessment of all applications is based on our objective criteria and statutory requirements.

- **Volume of submissions:** we consider relevant points raised, regardless of how many times they are stated. Repetition does not influence our assessment, which is based on the substance of the issues, not the frequency with which a point is made. Similarly, a point that is not relevant does not become valid through repetition.

Making an objection to an application

4.15 In addition to inviting representations, the following types of notice also provide an opportunity to make an objection to an application. In all other instances, objections cannot be made.

- A notice of proposal to grant a gas transporter licence
- A notice of proposal to grant an electricity transmission licence
- A notice of proposal to grant a modified licence

4.16 Further information on these notices and processes is set out in Appendix 2.

4.17 Objections will only be considered if submitted in the same manner as comments or representations, as detailed in Section 3. Their validity will be assessed against the criteria set out in this section.

4.18 In all circumstances, statements of support cannot be considered. However, where a statement of support raises matters that meet the criteria for validity set out above, those ‘valid’ comments or representations will be considered as part of our assessment.

Send us your feedback

We are keen to receive your feedback about this guidance. We would also like to get your answers to these questions:

- Do you have any comments about the quality of this guidance?
- Do you have any comments about its tone and content?
- Was it easy to read and understand? Or could it have been better written?
- Do you have any further comments?

Please send your feedback to stakeholders@ofgem.gov.uk.

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Appendix 1 Notice of application process

Notice of application

A1.1 The Acts and Application Regulations require applicants for a gas or electricity licence to publish a notice of their application:

- [Section 7B\(2\) of the Gas Act 1986](#) requires that after the making of an application for a licence or an extension or restriction of a licence and within a prescribed period, the applicant must publish a notice of the application in the prescribed manner. [Regulation 8 of the Gas \(Applications for Licences and Extensions and Restrictions of Licences\) Regulations 2019](#) requires that, within ten working days of being notified by Ofgem that an application is duly made, a notice to that effect must be published. This may be done either by Ofgem publishing the notice on its website, or by the applicant publishing the notice on their own website and requesting Ofgem to provide a link to it on its own site.
- Correspondingly, Section [6A\(3\) of the Electricity Act 1989](#) requires that following the submission of a licence application, and within a prescribed period, the applicant must publish a notice of the application in the prescribed manner. [Regulation 8 of the Electricity \(Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences\) Regulations 2019](#) requires that, within ten working days of being notified by Ofgem that an application is duly made, a notice to that effect must be published. This may be done either by Ofgem publishing the notice on its website, or by the applicant publishing the notice on their own website and requesting Ofgem to provide a link to it on its own site.

A1.2 Generally, it is Ofgem that publishes the notice of application on its website on behalf of the applicant. When a notice of application is published on our website, we ordinarily invite comments on the licence application. However, there is no statutory requirement to provide this opportunity for comment.

A1.3 In addition to the above requirements, where an application is for the restriction of a licence, [Regulation 8\(3\) of the Gas \(Applications for Licences and Extensions and Restrictions of Licences\) Regulations 2019](#) and [Regulation 8\(3\) of the Electricity \(Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences\) Regulations 2019](#) requires that the applicant shall also ensure that the notice of application is published within the prescribed period in such newspapers as are calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates.

Reason for seeking comments

- A1.4 This provides members of the public or stakeholders with an opportunity to make comments related to our application criteria so that we might consider them in making our assessment on the application concerned.
- A1.5 Unlike where representations are sought as elsewhere explained in this document, this is not a formal statutory consultation. Therefore, Ofgem will review comments received and, at its discretion, determine whether they are relevant against the criteria set out in Section 4. Only comments deemed relevant will be taken into account when deciding the licence application.

Appendix 2 Notices seeking statutory representations

Notice of proposal to grant a Gas Transporter licence

- A2.1 If having concluded our application assessment process we are minded to grant a licence for a gas transporter, [Section 7\(5\) of the Gas Act 1986](#) requires us to publish a notice to that effect, stating the reasons why we propose to grant the licence.
- A2.2 When this occurs, we are required by statute to provide a period of not less than two months during which representations or objections with respect to the proposed licence may be made for consideration.

Notice of proposal to grant an Electricity Transmission licence

- A2.3 If once we have concluded our application assessment process and Ofgem is minded to grant a licence for electricity transmission, [Section 6B\(3\) of the Electricity Act 1989](#) requires us to publish a notice to that effect, stating the reasons why we propose to grant the licence.
- A2.4 When this occurs, we are required by statute to provide a period of not less than 28 days during which representations or objections with respect to the proposed licence may be made for consideration.

Notice of proposal to grant a modified licence

- A2.5 In granting a licence, Ofgem may modify any of the standard conditions for that type of licence to such extent as it considers necessary to meet the circumstances of the particular case.
- For gas licence applications, this power is given at [Section 8\(3\) of the Gas Act 1986](#) and applies to any type of gas licence application. [Section 8\(4\) of the Gas Act 1989](#) requires that prior to making any such modification, Ofgem must give notice stating that it proposes to make the modifications, setting out their effect and stating the reasons we propose to make those modifications.
 - A corresponding power is also given at [Section 8A\(3\) of the Electricity Act 1989](#) and applies to any type of electricity licence. [Section 8A\(4\) of the Electricity Act 1989](#) requires that prior to making any such modification, Ofgem must give notice stating that it proposes to make the modifications, setting out their effect and stating the reasons we propose to make those modifications.
- A2.6 We must provide a period of not less than 28 days for representations or objections to be made and Ofgem must then consider any which are duly made and not withdrawn.

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A2.7 Such a modification is ordinarily made with the grant of an Independent Distribution Network Operation (IDNO) licence as certain standard conditions from the distribution licence must be disapplied and others added. In accordance with the provisions of the Electricity Act 1989, Ofgem delivers a statutory consultation on any proposed modification and seeks representations prior to granting the licence.

Notice of proposal to grant a licence transfer

A2.8 If a licensee wants to transfer their licence to a different legal entity, they must apply for consent from Ofgem, and the application will be assessed like a new one.

- For the transfer of a gas licence, the requirements are defined at [Section 8AA\(9\) of the Gas Act 1986](#) which requires that before giving consent to the transfer of a licence, Ofgem must give notice stating that it proposes to grant consent to the transfer and the reasons why it proposes to do so.
- Similarly, the requirements for the transfer of an electricity licence are defined at [Section 7A\(9\) of the Electricity Act 1989](#) which requires that before giving consent to the transfer of a licence, Ofgem must give notice stating that it proposes to grant consent to the transfer and state the reasons why it proposes to give consent.

A2.9 When this occurs, Ofgem is required by statute to provide a period of not less than two months during which representations or objections with respect to the proposed licence may be made for consideration if duly made and not withdrawn.

Reason for seeking representations and objections

A2.10 These opportunities provide members of the public or stakeholders an opportunity to make representations or objections about the licence application concerned.

A2.11 These are a formal statutory consultation process defined by statute as set out above but otherwise conducted in accordance with the provisions of this guidance and our published [licence application guidance](#).