



January 1999

**Licence Fee Arrangements**

**A Consultation Document**

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## Appendix 1

Condition 17 of the Gas Shippers' Licences  
Condition 26 of the Public Gas Transporters' Licences  
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## Appendix 2

Section 23 of the Gas Act 1986 (As Amended)

# 1. Introduction

Under section 7B(4)(c) of the Gas Act 1986 (the Gas Act) and the standard conditions of Gas Suppliers', Public Gas Transporters' and Gas Shippers' licences the Director General of Gas Supply (DGGS) may charge licence fees to recover the costs of the Office of Gas Supply (Ofgas), the Gas Consumers Council (GCC), and any costs incurred in relation to a reference by the DGGS to the Monopolies and Mergers Commission (MMC).

This document is intended to initiate consultation on whether the present arrangements for calculating the licence fees should be changed.

Ofgas is seeking views, in particular, on:

## ***i. Cost Allocation Between Groups of Licensees***

A proposal to introduce revised allocations of fees between holders of different types of licence from 1999-2000, and to adopt annual revisions thereafter.

## ***ii. The Basis for Determining Individual Licence Fees***

### ***a) The Accounting Day***

A proposal to change the method of calculating the licence fees from setting fees based on number of premises supplied on one Accounting Day (1 April), to the adoption of an average number of premises supplied throughout the year.

### ***b) The Base Unit of Measurement***

Whether the base unit of measurement should be changed from number of premises to the annual quantity of gas transported, shipped and supplied by licensees.

### ***c) The Minimum Fee / Premises Threshold***

A proposal to abolish minimum licence fees with all licence fees being calculated in future on a pro-rata basis depending on average quantity of gas or number of premises served.

## ***iii. The Licence Fee Cap***

Whether the present licence fee cap should be removed or modified.

Chapter 2 provides background information on the regulatory framework, the current gas licence fee arrangements and changes in Ofgas' Accounting and Planning Systems. Chapter 3 summarises the licence fee regimes of other utility regulatory offices. Chapter 4 considers possible changes to the gas licence fee regime and invites views from respondents.

Section 7B of the Gas Act and the associated Gas (Application for Licences and Extensions and Restrictions of Licences) Regulations 1996 (SI 1996 No 476) provide for the charging of fees to cover the costs of awarding licences. For the avoidance of doubt, fees connected with applying for a licence are not being consulted upon. They represent a one-off charge associated with the marginal costs to Ofgas of the award of the licence.

Ofgas would be grateful for comments on the issues raised in this document and any others which interested parties wish to make. It would be helpful to receive responses by Monday 22 February. Ofgas will then consider the representations made and if necessary draft a final proposal with notice of the proposed modifications to the standard conditions of the licences which will be circulated to all licensees so that they may indicate their consent or otherwise to the licence modification.

It is open to respondents to mark all or part of their responses as confidential. However, we would prefer, as far as possible, that responses were provided in a form that can be placed in the Ofgas library. Replies should be addressed to:

Roy Field  
Director  
Office of Gas Supply  
Stockley House  
130 Wilton Road  
London SW1V 1LQ.

If you have any queries concerning this consultation Richard Fawssett on 0171 932 1676 will be pleased to help.

## 2. Background

### 2.1 *The Regulatory Framework*

Section 7B, (4)(a) of the Gas Act allows for the inclusion in all licences granted under it of a condition requiring the payment of a licence fee to the DGGS, such as may be determined by or under the licence. The DGGS may charge licence fees, which will achieve full recovery of Ofgas costs, and reasonable costs of the GCC and any costs associated with a reference by the DGGS to the MMC.

The requirement for a licensee to pay the licence fee is set out in the conditions of the licence as follows:

- ◆ Standard condition 32 of Gas Suppliers' Licences.
- ◆ Standard condition 26 of Public Gas Transporters' Licences.
- ◆ Standard condition 17 of Gas Shippers' Licences.

The standard conditions covering the payment of licence fees are set out in Appendix 1.

In accordance with paragraph 4 (b) of each of the standard conditions, the overall amount which can be recovered collectively from licensees, is capped at £14m (in April 1996 prices). This cap can be adjusted each year for inflation, based on the movements in the Retail Price Index ('RPI') from December 1995 to the following December each year.

Section 23 of the Gas Act sets out (inter alia) the basis on which the DGGS may modify for general application the standard conditions of licences (see Appendix 2). Under Section 23 the DGGS may not make such a modification unless 90% of the licence holders in the category affected by the proposed change have consented to the modification. The power of the DGGS to amend licences under section 23 is subject to veto by the Secretary of State. If a licence condition cannot be introduced by agreement under section 23, the DGGS may make a reference to the MMC under Section 24 if he remains minded to press for the introduction of a modification.

## **2.2 The Current Licence Fee Arrangements**

### **a) Cost Allocation Between Groups of Licensees**

The current licence fee arrangements seek to charge licensees a proportionate share of the Ofgas and GCC costs which are both reasonable and represent the costs of the regulatory resource consumed in regulating in the three licensing groups (ie. suppliers, shippers, and public gas transporters). Any MMC costs resulting from a reference by the DGGs are shared on a proportionate basis amongst the type of licensee involved.

The proportion of total recoverable costs to be paid by each group of licence holder - i.e. how much of the costs each licensee group should bear, is based on an estimate made at the time the Gas Act 1995 was passed of the resources committed to regulating each group of licensees. The current proportions are as follows:

◆ Gas Suppliers	50%
◆ Public Gas Transporters	45%
◆ Gas Shippers	5%

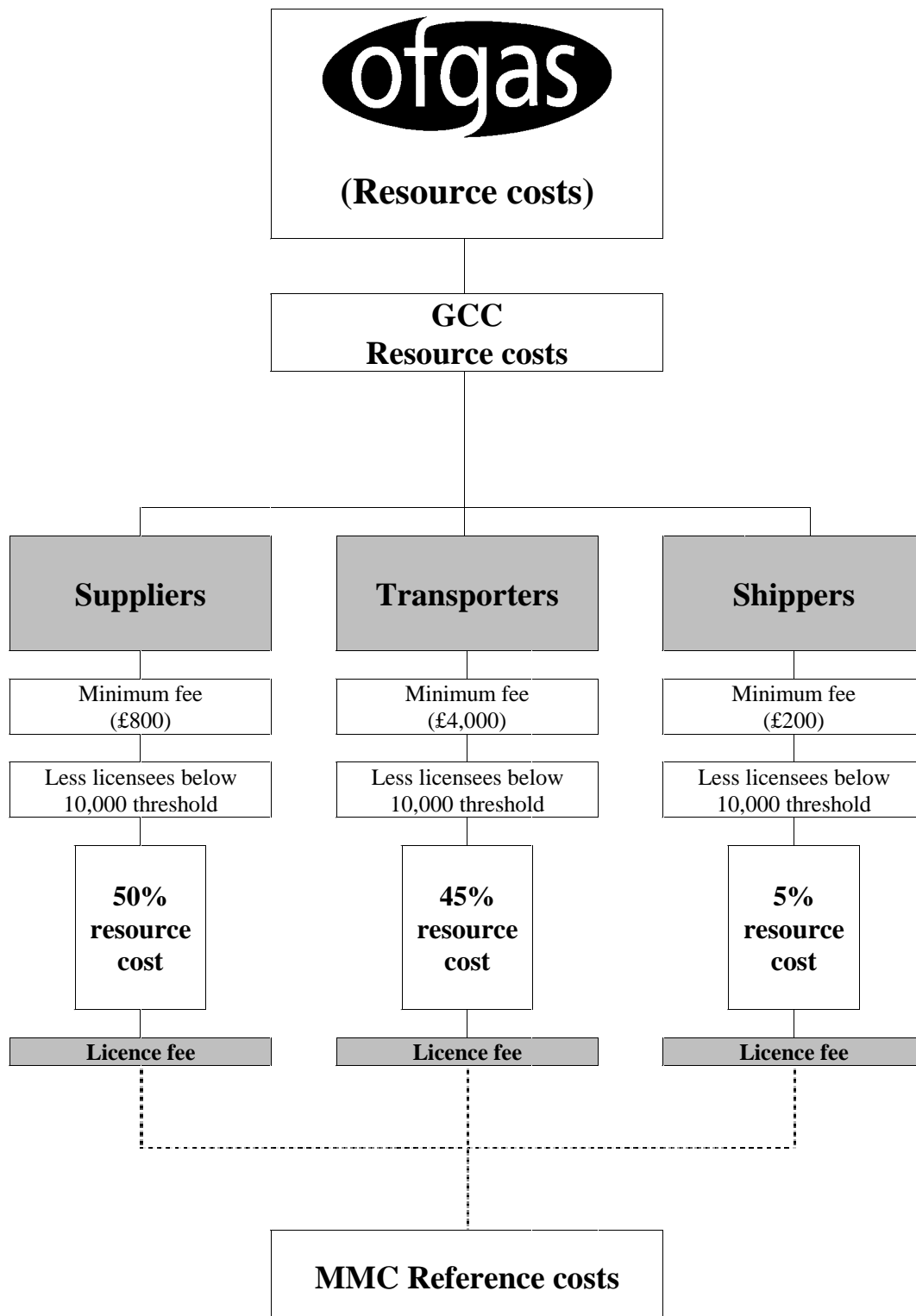
### **b) The Basis for Determining Individual Licence Fees**

The licence fees charged to individual licensees are based on 'in-year' costs. All licensees are "allocated" a minimum fee, which is then deducted from the overall licence fee paid by each group. This procedure identifies the sum to be shared proportionately by that group of licensees. Accordingly:

- ◆ licensees who serve up to 10,000 premises are required to pay the minimum fee only; and
- ◆ licensees who serve above 10,000 premises are required to pay a proportionate share of the group costs (plus their minimum fees), based on number of premises being served by the licensee on the "accounting day".

The accounting day is determined, in each of the standard conditions mentioned above, to be the 1st April each year.

As a simple diagrammatic guide to the fee regime is:



## 2.3 Licence Fee Calculation

Details of the 1998-1999 Licence Fees are as follows:

<b>LICENCE FEE RECOVERY 1998-99 (£000)</b>		
1998/99 Estimate (i)	12,435	
Less Appropriations in Aid (ii)	1,885	
1997/98 Supplementaries (iii)	2,628	(£3.128m less £0.5m spent on Technical Directorate)
Less funds not spent in 1997/98	178	
Less End Year Flexibility for 1996/97	103	Erroneously charged in 1997/98 licence fee
<b>TOTAL Ofgas</b>	<b>12,897</b>	
GCC 1998/99	2,882	
Less over recovery GCC 1997/98	21	Charged £2.9m to licence fee paid GCC £2.879m
Less licence applications fees 1997/98	72	
<b>TOTAL LICENCE FEE 1998/99</b>	<b>15,686</b>	
<b>LICENCE FEE RECOVERABLE:</b>		
Limit	14,000	
Plus inflation	866	Based on 2.5% and 3.6% for 1996 and 1997 respectively – RPI figures obtained from ONS
<b>TOTAL FEE RECOVERABLE</b>	<b>14,866</b>	
<b>SHORTFALL</b>	<b>819</b>	This is to be carried forward

Notes:

- (i) 1998/99 Estimate - Class V Vote 9, House of Commons (HC) 635.
- (ii) Fees received in connection with the activities detailed in Section 17 of the Gas Act.
- (iii) 1997/98 Supplementaries:

Summer 1997/98	HC 65	£1,975,000
Winter 1997/98	HC 278	£1,053,000
Spring 1997/8	HC 511	£100,000

## **2.4 *Changes in Accounting and Planning Systems***

Most government departments are funded through the "Vote" accounting system. Each department submits for HM Treasury approval a work plan for the forthcoming financial year, and 3 forward years, fully costed. These plans and costings are rigorously scrutinised by the Treasury and, once passed, they form the "Supply Estimate". This is then passed to Parliament for debate, Vote and approval.

Once approved by Parliament, the Supply Estimate effectively becomes the budget for the department. The Treasury recoups the budget by recovering the licence fees collected by Ofgas.

If necessary additional funding can be sought by departments through the "Supplementary Estimate" procedures. Such extra funding follows the same procedures as the Supply Estimate and is usually restricted to three set times throughout the financial year - summer, winter and spring. The approved cost of the budget, plus any supplementaries, forms the basis for the fee calculation.

This Vote system is commonly called "Cash Accounting" as, once approval has been given by Parliament, the internal finance structures within each department merely record that the monies voted have been spent. However, with effect from this financial year (1<sup>st</sup> April 1998 to 31<sup>st</sup> March 1999), Ofgas, in common with all other regulators, has been charged with operating under a new "NETT Accounting" financial regime.

There were several anomalies in the Vote system that distorted financial recovery; the switch to NETT Accounting should help even out the levels of the fees and charges. The planning processes meant that the budget level could not always cover developments in the market, particularly during the introduction of competition in the gas market. This caused the Office to seek supplementary funding to cover the costs of additional work which could not be planned when the initial vote was sought. Because these supplementaries were gained late in the financial year, recovery of the costs was always staggered so that a supplementary fund received in 1996-97 would be recovered during 1997-98, as the 1996-97 licence costs would already have been calculated. Anomalies could also arise where costs such as those incurred in MMC enquiries and by the GCC were generated outside the control of Ofgas.

NETT Accounting places Ofgas under much tighter internal spending controls. The new regime should also help licensees in that the fees and charges will cover 'in-year' costs, reducing apparently retrospective charges, which may distort cash flow.

Over-arching all of these changes is the government directive on re-focusing the accountability in terms of public finance. The White Paper on Resource Accounting and Budgeting (Cm 2929) requires all departments to move from "Cash Accounting" principles to an "Accruals Account" basis. Under the Resource Accounting regime each department will produce financial statements in much the same way as an industrial or commercial company, in particular a balance sheet, a cash flow statement and the equivalent of a profit and loss statement. To produce these documents the internal financial structure of the Office will become far more centred on the consumption of resources. The regime also requires Ofgas to produce an Output and Performance Analysis, which will form the basis on which the efficiency of the Office can be measured.

The Ofgas finance systems are currently being restructured to produce both the statements and the operational controls required.

The planning structure within Ofgas is centred on a layered plan which is inter-linked to both the Output and Performance Analysis and the internal measures governing individual performance.

The Corporate Plan sets the high level aims for the Office. It corresponds to the "Mission Statement" which can be found in much of the commercial sector. The Operational Plan links the overall aims of the Office as set out in the Corporate Plan to Directorate targets. The Operational Plan sets the Output and Performance measures and details the way in which they will be monitored.

The government's Green Paper "A Fair Deal for Consumers" (July 1998) suggested that the regulators should consult more fully on their work programmes and activities in order to create a more open regulatory regime.

Ofgas' current Corporate and Operational Plans do not provide detailed information, such as data on individual projects or investigations active in-year and the staff responsible for managing those projects. Ofgas intends to develop and publish an 'In-Year' Work Programme that will provide this information.

### 3. Licence Fee Regimes in Other Regulatory Offices

Given the convergence of the markets for electricity and gas, the Government is committed to merge Ofgas and Office of Electricity Supply (OFFER) under a combined energy regulator. The Government has confirmed that as part of the merger between Ofgas and OFFER, the existing gas and electricity regimes will be aligned and integrated. It is therefore appropriate to consider whether there are lessons to be learned from the licence fee arrangements in electricity as well as the other utilities.

These are summarised below.

#### 3.1 *Electricity*

OFFER seek to recover their costs from licensees by an apportionment of costs on the industry's standard unit of output; the Megawatt Hour (MWh). Thus the MWhs of electricity generated, transmitted and supplied to customers determines the licensees' contribution to OFFER's costs.

During any licence fee setting cycle the fees collectable are calculated three times:

1. During October an estimated Memorandum Trading Account (MTA) is produced based upon the following year's Vote Estimate. This and completed questionnaires received from the industry, which give the estimated industry output in MWh's are combined to give a unit cost, (Pence per Megawatt Hour). The unit cost is multiplied by each licensee's reported estimated activity, giving rise to an estimated licence fee. This estimate is reported, with a suitable health warning, to the licence holder for budgeting purposes.
2. During July / August an updated MTA, based upon allocated budgets, actual performance in the first quarter of the Financial Year and manager' forecasts, is produced. This and the completed questionnaires, giving the **actual** industry output in MWh's, are combined to give a revised unit cost (Pence per Megawatt Hour). The unit cost is multiplied by each licensee's actual reported activity, giving rise to a revised estimate of the licence fee. This amount is then invoiced and collected.

3. At the end of the financial year **actual** MWh output and **actual** financial performance in the form of the MTA for the year combine to give the **actual** licence fee. Any excess fee collected is rolled forward to reduce the total fee collected in the next cycle.

All licence fees are subject to a minimum charge of £250 per year, thus a licence holder who reports no activity and who wishes to retain a licence will be charged £250. VAT is not levied on the licence fee.

### **3.2 Water**

The Office of Water Services (OFWAT) recovers the cost of its operation through a formula based on a proportion of turnover of individual companies compared to the whole industry. The renewal fee is based on a set figure uplifted by RPI but OFWAT can recover additional in-year costs through a special fee. In the three years leading up to a Periodic Review a further charge is made based on 0.3% of the industry turnover.

### **3.3 Telecommunications**

The Office of Telecommunications (OFTEL) is currently in the process of consulting with the industry on whether to make changes to the calculation of telecommunication licence fees in order to make the licence fee regime more transparent and proportionate.

Telecom licences currently fall into two categories: individual licences granted to a particular company, and class or general licences.

At present all individual licensees pay an initial fee on the granting of the licence. The fee represents the cost to DTI and OFTEL of examining and processing the application. In addition, an annual renewal fee is charged, based on the cost of regulation and enforcement of the applicable licence.

The present fees regime allows for licence renewal fees to be levied as either a fixed fee or a fee determined by the Director following a method which has been disclosed to the licensee (turnover). The present regime also allows for what is termed a special fee, which is in effect a supplementary fee to be levied where the estimated costs to be incurred by OFTEL will exceed the renewal fees for that year.

Licence fees are not levied for class licences.

## 4. Possible Changes to the Gas Licence Fee Regime

Since the inception of the gas licence fee regime a number of issues have been raised by licensees which could be addressed by changing the way in which the licence fee is calculated. These are considered below.

### 4.1 *Cost Allocation Between Groups of Licensees*

The group allocation system was introduced as a particular method of apportioning regulatory resource costs between the three categories of licensee – Gas Suppliers, Transporters and Shippers. In accordance with paragraph 4 of each of the Standard Conditions, if the DGGS is of the opinion that the percentage splits currently in use do not fairly reflect the costs of administration for each group, he may revise them and designate new figures. It was accepted that regular reviews would be undertaken to consider whether the percentage allocations should be adjusted to reflect more accurately the extent of regulatory effort directed at these groups.

Preliminary information for the current financial year suggests that in terms of Ofgas' own costs, the percentage split may be as follows (the existing group allocation used in calculating the present licence fee is also shown):

<b>Group Allocations</b>	<b>Possible</b>	
	<b>1999/2000</b>	<b>1998/1999</b>
	%	%
Gas Suppliers	45	50
Public Gas Transporters	51	45
Gas Shippers	4	5

(These allocations take no account of GCC costs whose financial systems remain separate from Ofgas).

The current restructuring of the finance systems within Ofgas should make for more accurate identification and categorisation of costs throughout the year and will provide a clearer picture to underpin group allocation. However, it should be noted that there are judgements to be made in the allocation of costs: for example a significant part of the costs attributed to PGTs derive from Network Code issues which also could be categorised as shipper related costs.

It is therefore proposed that starting from 1999-2000 the licence fee group allocations will be reviewed annually to more accurately reflect the actual burden of activity year on year. This exercise will be repeated in following years, and will also include an adjustment factor for any actual under or over allocations from the previous year.

**Ofgas invites views on the cost allocations between groups of licensees. In particular views are invited on the proposal to introduce revised allocations from 1999-2000, and to adopt annual revisions thereafter.**

#### **4.2    *The Basis for Determining Individual Licence Fees***

##### **a)        *The "Accounting Day"***

Those licensees who serve above 10,000 premises are required to pay a proportionate share of the group costs, plus the minimum fee to be paid by the group members. The individual licence fee is based on the number of premises being served by the licensee on the "accounting day". The accounting day is presently determined to be the 1<sup>st</sup> of April each year.

It has been suggested that simply using the beginning of the financial year as the basis for determining number of premises being supplied is misleading. By using a single date the calculation, by definition, does not take into account the number of premises served throughout the year. Historically this has not been an issue, but as competition in gas supply has developed, the switching of customers between suppliers later in the year has led to perceived anomalies.

The following procedure is proposed as a more equitable method for determining the number of premises supplied:

- ◆ interim invoices for 75% of the estimated annual licence fee, based on the number of premises as at 1<sup>st</sup> January, would be sent out in March of each year, payable on 1<sup>st</sup> April; and
- ◆ final invoices for the remaining 25% would be sent out in December, adjusted to take account of changes in number of premises over the past four quarters.

To facilitate this new procedure, all licensees would be asked to provide details of number of premises being supplied on a quarterly basis. This would allow for the adoption of an "average" figure in determining the final proportion of the group cost to be paid by each individual licensee each year. For example, in the case of a licensee whose customer numbers were as follows:

Date	1 Jan	1 Apr	1 Jul	1 Oct
Customer Numbers	100,000	95,000	92,000	95,000

- ◆ The interim invoice (sent out in March) would be based on 100,000 premises supplied.
- ◆ The final invoice (sent out in December) would be based on 95,500 premises, this being the average of the previous four quarters.

**Ofgas invites views on the proposal to change the method of calculating the licence fees from setting fees based on number of premises supplied on one Accounting Day (1 April), to the adoption of an average number of premises supplied throughout the year.**

***b) The Base Unit of Measurement***

As already indicated the calculation of licence fees is currently based on the number of premises. Under paragraph 3 of each of the Standard Conditions, the licensees must furnish the DGGs with details of the number of premises to which they are transporting / supplying / shipping gas after being requested to do so.

It has been argued that the premises-based approach favours the shipper / supplier who delivers large quantities of gas to only a few premises. This method makes no distinction between supplying, for example a one bedroom flat and a large industrial plant. It therefore has been suggested that using annual quantity of gas supplied (AQ) as the base unit of measurement would be more equitable as between shippers and suppliers.

It could equally be argued however, that annual quantities do not provide a basis for a fair system. In particular, the number of premises served is likely to be a more accurate guide to the potential number of complaints and enquiries than an output measure. The level of complaints and enquiries has a corresponding effect on the regulatory workload for the Consumer Affairs & Licensing Directorate of Ofgas and the GCC.

Ofgas believes that on balance, changing to an output measure would be a more equitable, and also notes that this would be more in line with the policies of other Regulatory Bodies. OFFER presently uses this approach (see section 3.1).

**Ofgas invites views on the base unit of measurement, and in particular on whether it should be changed from number of premises to the annual quantity of gas transported, shipped and supplied by licensees.**

**c) *The Minimum Fee / Premises Threshold***

A number of differing views have been expressed on the subject of the minimum fee (£800 for Gas Suppliers, £4,000 for Public Gas Transporters, and £200 for Gas Shippers). Some licensees believe that the minimum fee is too low and should be increased. Others believe that it should be reduced or abolished. In addition, licensees have questioned the considerable variation of minimum fee between the different categories of licensees. Differing views have also been expressed regarding the appropriateness of the 10,000 premises threshold.

Ofgas has considered the arguments. It concedes that it is very difficult to validate both the absolute level of minimum fee and the ratio between the different categories. There are certain costs associated with monitoring the smallest / inactive licensees, but these costs are not particularly significant. The present policy of charging minimum fees is not therefore reflective of costs. It may however incentivise licensees to surrender licences which are no longer used.

Ofgas proposes that the minimum fee is abolished, with all licence fees being calculated in future on a pro rata basis depending on average quantity or number of premises served. Under this proposal the 10,000 premises threshold would therefore cease to exist.

In financial terms this proposal will have a relatively modest impact on the level of fees payable by licensees. The following are examples of fees payable under the present regime and the proposed alternative regime by Gas Suppliers based on 1998 figures:

Number of Premises Supplied	Current Fee Payable	Proposed Fee Payable
0	£800	£0
470	£800	£171
2,058	£800	£750
33,170	£9,285	£12,087
156,301	£54,375	£56,956

**Ofgas invites views on the proposal to abolish the minimum licence fees with all licence fees being calculated in future on a pro-rata basis depending on average quantity of gas or number of premises served.**

### **4.3    *The Licence Fee Cap***

The overall fee chargeable by the DGGs is limited to the sum of £14m plus inflation based on the movement of the RPI from December 1995 to the following December each year. The intention of the cap was to ensure that there was a downward pressure on regulatory expenditure, imposing a discipline of cost constraint.

However, while the cap may provide some financial reassurance to licensees, it constrains the actions of Ofgas and the GCC in responding effectively to developments in the market. For example, to deal with the rising number of consumer enquiries as the domestic gas supply market has been opened to competition, both the GCC and Ofgas have installed extensive customer advisory facilities. The GCC run their service from a Leicester office and have faced funding difficulties caused by the volume of enquiries / complaints received. The help-line set up by Ofgas has also witnessed an enormous increase in volumes (see table below), necessitating a major expansion of this facility. For the current year, this is now expected to cost nearly £1m.

Year to December	1995	1996	1997	1998
Enquiries	60	243	431,780	448,763
Complaints	3,389	9,044	27,274	61,877

Ofgas considers it must not be prevented, by unrealistically low financial constraints, from taking action where it is deemed necessary. At present Ofgas' expenditure is at the limit provided by the cap. Reassurance over the proposed work programme and the costs involved would still be gained through the rigorous scrutiny of Ofgas plans by HM Treasury during the annual Comprehensive Spending Review.

Neither OFFER, nor OFTEL has a licence fee cap. Moreover although OFWAT, is subject to a licence fee cap, additional in year costs can be recovered through a special fee (see section 3.2).

In summary, whilst Ofgas agrees with the principal behind cost caps, and specifically, the need to control its costs, it believes that the cap, as presently formulated is too restrictive. Accordingly, Ofgas believes that consideration should be given to either the abolition of the licence fee cap, or

increasing the licence fee cap to a more appropriate level. Alternatively, consideration could be given to maintaining the licence fee cap at the existing level, but apply it only to Ofgas' core regulatory costs. The other costs, such as the customer advisory facilities (including the GCC costs) then would fall outside the cap.

**Ofgas invites views on whether the present licence fee cap should be removed or modified.**

## Appendix 1

### **Standard Condition 17 of the Gas Shippers' Licences: Payments by licensee to the Director**

(1) The licensee shall pay to the Director in respect of each relevant year, within 30 days of the giving by the Director to the licensee notice of an amount determined in accordance with paragraph (2) below, that amount.

(2) The amount payable under paragraph (1) in respect of a relevant year shall be the minimum fee or, if the licensee was the relevant shipper in relation to more than 10,000 premises on the accounting day, the aggregate of -

- (a) the minimum fee;
- (b) an additional amount calculated by -
  - (i) taking the relevant percentage of the total recoverable costs;
  - (ii) adding to that amount any amount determined by the Director (in consultation with the Monopolies Commission<sup>1</sup>), for the purposes of this condition generally, as having been incurred by the Commission in the preceding relevant year in connection with references made to it under section 24 of the Act relating to a licence or licences granted under section 7A(2) of the Act;
  - (iii) subtracting from the amount calculated as aforesaid an amount equal to the minimum fee multiplied by the number of persons who, on the accounting day, held relevant shippers' licences;
  - (iv) multiplying the amount calculated as aforesaid by the factor -

$$\frac{A}{B}$$

where -

"A" means the number of premises in excess of 10,000 in relation to which the licensee was the relevant shipper on the accounting day;

"B" means the aggregate number of premises to which gas was conveyed on the accounting day by a public gas transporter in pursuance of arrangements made by persons who held relevant shippers' licences on that day disregarding, in the case of each such person, the first 10,000 premises to which gas was so conveyed in pursuance of arrangements made by that person.

[(2A) For the purposes of paragraph (2), where, on any accounting day, gas was -

- (a) taken out of a pipe-line system of a public gas transporter in accordance with sub-deduct arrangements, and
- (b) conveyed to secondary sub-deduct premises,

it shall be deemed to have been conveyed on that day to the secondary sub-deduct premises by a public gas transporter in pursuance of arrangements made by a person who held a relevant shipper's licence on that day]<sup>2</sup>.

<sup>1</sup> By section 45(4) of the Competition Act 1998 any reference to the MMC shall be read as a reference to the Competition Commission.

<sup>2</sup> Modified by Secretary of State on 30 November 1986 under standard condition 1(12)(b)

(3) The licensee shall as soon as is practicable after an accounting day furnish the Director with such information as to the number of premises in relation to which the licensee was the relevant shipper on that day as the Director may from time to time require.

(4) In this condition -

“the accounting day”, in relation to a relevant year, means 1st April in that year;

“minimum fee”, in relation to a relevant year, means, in the case of the relevant year beginning with 1st April 1996, £200 or, in the case of any subsequent relevant year, that sum adjusted in accordance with standard condition 18 except that any fraction of £1 in the sum as so adjusted shall be disregarded;

“relevant percentage” means 5% or, if the Director is of the opinion that that percentage does not fairly represent the proportion of the total recoverable costs which such costs incurred in connection with the activities of gas shippers or related matters constitute, such other percentage as he may from time to time designate, for the purposes of this condition generally, as more fairly representing that proportion;

“relevant shipper’s licence” means a licence granted under section 7A(2) of the Act which incorporates this standard condition, and any reference to a person who holds a relevant shipper’s licence includes a reference to the licensee;

“relevant year” means a year beginning with 1st April in 1996 or any subsequent year at the beginning of which the licensee holds a licence under section 7A(2) of the Act;

“total recoverable costs” means the lesser of -

(a) the aggregate of -

- (i) the amount estimated by the Director, for the purposes of this condition generally, as likely to be the costs incurred by him during the relevant year in the exercise of the functions assigned to him by or under the Act otherwise than by paragraph 6 of Schedule 2 to the Act;
- (ii) the amount so estimated by the Director after consulting the Secretary of State as likely to be the costs incurred by the Gas Consumers’ Council during the relevant year in the exercise of its functions under the Act, and
- (iii) except in the case of the relevant year beginning with 1st April 1996, the amount of the difference, if any, between the costs mentioned in subparagraph (i) or (ii) which the Director considers were actually incurred during the previous relevant year and the estimate of the costs in question made by him for the purposes of this provision, where the latter exceeds the former the amount of the difference being treated as a negative amount, and

(b) in the case of the relevant year beginning with 1st April 1996, £14 million or, in the case of any subsequent relevant year, that sum adjusted in accordance with standard condition 18 except that any fraction of £1,000 in the sum as so adjusted shall be disregarded.

**Standard Condition 26 of the Public Gas Transporters' Licences: Payments by licensee to Director**

(1) Where the Director has given the licensee notice of the amount in respect of a particular year, determined in accordance with paragraph (2), the licensee shall, within 30 days of being given that notice and in respect of that relevant year, pay that amount to the Director.

(2) The amount payable under paragraph (1) in respect of a relevant year shall be the minimum fee or, if the licensee was conveying gas to more than 10,000 premises on the accounting day, the aggregate of -

- (a) the minimum fee;
- (b) an additional amount calculated by -
  - (i) taking the relevant percentage of the total recoverable costs;
  - (ii) adding to that amount any amount determined by the Director (in consultation with the Monopolies Commission<sup>3</sup>), for the purposes of this condition generally, as having been incurred by the Commission in the preceding relevant year in connection with references made to it under section 24 of the Act relating to a licence or licences granted under section 7 of the Act;
  - (iii) subtracting from the amount calculated as aforesaid an amount equal to the minimum fee multiplied by the number of persons who, on the accounting day, held relevant transporter licences;
- (iv) multiplying the amount calculated as aforesaid by the factor -

$$\frac{A}{B}$$

where -

"A" means the number of premises in excess of 10,000 to which the licensee conveyed gas on the accounting day;

"B" means the aggregate number of premises to which gas was conveyed on the accounting day by persons who held relevant transporter licences on that day disregarding, in the case of each such person, the first 10,000 premises to which gas was so conveyed.

(3) The licensee shall as soon as is practicable after an accounting day furnish the Director with such information as to the number of premises to which the licensee was conveying gas on that day as the Director may from time to time require.

[(3A) For the purposes of paragraphs (2) and (3), references to premises to which the licensee or another public gas transporter conveyed or was conveying gas shall include any secondary sub-deduct premises where the licensee or that other transporter conveyed or was conveying gas to the relevant primary sub-deduct premises.]<sup>4</sup>

(4) In this condition -

"the accounting day", in relation to a relevant year, means 1st April in that year;

<sup>3</sup> By section 45(4) of the Competition Act 1998 any reference to the MMC shall be read as a reference to the Competition Commission.

<sup>4</sup> Modified by Secretary of State on 30 November 1986 under standard condition 1(12)(b)

“minimum fee”, in relation to a relevant year, means, in the case of the relevant year beginning with 1st April 1996, £4,000 or, in the case of any subsequent relevant year, that sum adjusted in accordance with standard condition 27, except that any fraction of £100 in the sum as so adjusted shall be disregarded;

“relevant percentage” means 45% or, if the Director is of the opinion that that percentage does not fairly represent the proportion of the total recoverable costs which such costs incurred in connection with the conveyance of gas or related matters constitute, such other percentage as he may from time to time designate, for the purposes of this condition generally, as more fairly representing that proportion;

“relevant transporter licence” means a licence granted under section 7 of the Act which incorporates this standard condition, and any reference to a person who holds a relevant transporter licence includes a reference to the licensee;

“relevant year” means a year beginning with 1st April in 1996 or any subsequent year;

“total recoverable costs” means the lesser of -

(a) the aggregate of -

- (i) the amount estimated by the Director, for the purposes of this condition generally, as likely to be the costs incurred by him during the relevant year in the exercise of the functions assigned to him by or under the Act otherwise than by paragraph 6 of Schedule 2 to the Act;
- (ii) the amount so estimated by the Director after consulting the Secretary of State as likely to be the costs incurred by the Gas Consumers’ Council during the relevant year in the exercise of its functions under the Act, and
- (iii) except in the case of the relevant year beginning with 1st April 1996, the amount of the difference, if any, between the costs mentioned in sub-paragraph (i) or (ii) which the Director considers were actually incurred during the previous relevant year and the estimate of the costs in question made by him for the purposes of this provision, where the latter exceeds the former the amount of the difference being treated as a negative amount, and

(b) in the case of the relevant year beginning with 1st April 1996, £14 million or, in the case of any subsequent relevant year, that sum adjusted in accordance with standard condition 27 except that any fraction of £1,000 in the sum as so adjusted shall be disregarded.

### **Standard Condition 32 of the Gas Suppliers' Licences: Payments by licensee to Director**

(1) Where the Director has given the licensee notice of the amount in respect of a particular relevant year, determined in accordance with paragraph (2), the licensee shall, within 30 days of being given that notice and in respect of that relevant year, pay that amount to the Director.

(2) The amount payable under paragraph (1) in respect of a relevant year shall be the minimum fee or, if the licensee was supplying gas to more than 10,000 premises on the accounting day, the aggregate of -

- (a) the minimum fee;
- (b) an additional amount calculated by -
  - (i) taking the relevant percentage of the total recoverable costs;
  - (ii) adding to that amount any amount determined by the Director (in consultation with the Monopolies Commission<sup>5</sup>), for the purposes of this condition generally, as having been incurred by the Commission in the preceding relevant year in connection with references made to it under section 24 of the Act relating to a licence or licences granted under section 7A(1) of the Act;
  - (iii) subtracting from the amount calculated as aforesaid an amount equal to the minimum fee multiplied by the number of persons who, on the accounting day, held relevant supply licences;
  - (iv) multiplying the amount calculated as aforesaid by the factor -

$$\frac{A}{B}$$

where -

"A" means the number of premises in excess of 10,000 to which the licensee supplied gas on the accounting day;

"B" means the aggregate number of premises supplied with gas on the accounting day by persons who held relevant supply licences on that day disregarding, in the case of each such person, the first 10,000 premises so supplied.

(3) The licensee shall as soon as is practicable after an accounting day furnish the Director with such information as to the number of premises to which the licensee was supplying gas on that day as the Director may from time to time require.

(4) In this condition

"the accounting day", in relation to a relevant year, means 1st April in that year;

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<sup>5</sup> By section 45(4) of the Competition Act 1998 any reference to the MMC shall be read as a reference to the Competition Commission.

“minimum fee” in relation to a relevant year, means, in the case of the relevant year beginning with 1st April 1996, £800 or, in the case of any subsequent relevant year, that sum adjusted in accordance with standard condition 36 except that any fraction of £1 in the sum as so adjusted shall be disregarded;

“relevant percentage” means 50% or, if the Director is of the opinion that that percentage does not fairly represent the proportion of the total recoverable costs which such costs incurred in connection with the supply or use of gas or related matters constitute, such other percentage as he may from time to time designate, for the purposes of this condition generally, as more fairly representing that proportion;

“relevant supply licence” means a licence granted under section 7A(l) of the Act which incorporates this standard condition, and any reference to a person who holds a relevant supply licence includes a reference to the licensee;

“relevant year” means a year beginning with 1st April in 1996 or any subsequent year at the beginning of which the licensee holds a licence under section 7A(1) of the Act;

“total recoverable costs” means the lesser of -

- (a) the aggregate of -
  - (i) the amount estimated by the Director, for the purposes of this condition generally, as likely to be the costs incurred by him during the relevant year in the exercise of the functions assigned to him by or under the Act otherwise than by paragraph 6 of Schedule 2 to the Act;
  - (ii) the amount so estimated by the Director after consulting the Secretary of State as likely to be the costs incurred by him or the Secretary of State during the relevant year in defraying or contributing towards the expenses of the Council in accordance with paragraph 6 of Schedule 2 to the Act, and
  - (iii) except in the case of the relevant year beginning with 1st April 1996, the amount of the difference, if any, between the costs mentioned in subparagraph (i) or (ii) which the Director considers were actually incurred during the previous relevant year and the estimate of the costs in question made by him for the purposes of this condition, where the latter exceeds the former the amount of the difference being treated as a negative amount, and
- (b) in the case of the relevant year beginning with 1st April 1996, £14 million or, in the case of any subsequent relevant year, that sum adjusted in accordance with standard condition 36 except that any fraction of £1,000 in the sum as so adjusted shall be disregarded.

## Appendix 2

### *Modification of licences*

#### **Modification by agreement.**

**23<sup>6</sup>.**—(1) Subject to the following provisions of this section, the Director may—

- (a) modify the conditions of a particular licence<sup>7</sup>; or
- (b) modify the standard conditions of licences under section 7 above, licences under sub-section (1) of section 7A above or licences under sub-section (2) of that section<sup>8</sup>.

(2) Where at any time the Director modifies under sub-section (1)(b) above the standard conditions of licences under section 7 above, licences under sub-section (1) of section 7A above or licences under sub-section (2) of that section, he—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences under that section or, as the case may be, that sub-section granted after that time; and
- (b) may make such incidental or consequential modifications as he considers necessary or expedient of any conditions of licences under that provision granted before that time.

(3) Before making modifications under this section, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under sub-section (3) above shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by sending a copy of the notice to the holder of the licence or, as the case may be, the relevant licence holders, to the Secretary of State, to the Health and Safety Executive and to the Council.

(5) If, within the time specified in the notice under sub-section (3) above, the Secretary of State directs the Director not to make any modification, the Director shall comply with the direction.

(6) The Director shall not make any modifications under sub-section (1)(a) above unless—

- (a) the holder of the licence has consented to the modifications; and

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<sup>6</sup> This section substituted by Gas Act 1995 Schedule 3 paragraph 21.

<sup>7</sup> Modifications have been made as follows:

November 1996 to British Gas Trading Ltd's supply licence,  
December 1996 to special condition 3 of Transco's licence,  
June 1997 to special conditions 3 and 4 of British Gas Trading Ltd's supply licence,  
August 1997 to British Gas Trading Ltd's supply licence (advance notice of certain tariff changes),  
December 1997 to introduce a new special condition 3A to British Gas Trading Ltd's supply licence,  
December 1997 to special condition 6 of the public gas supplier licence of AGAS Developments Limited  
February 1998 to special condition 9C of Transco's licence.

<sup>8</sup> Modifications were made in January 1998 to the standard conditions of gas suppliers licences by introducing a new standard condition 14A dealing with marketing to domestic customers.

(b) in the case of standard conditions of a licence under sub-section (1) or (2) of section 7A above, the Director is of the opinion that the modifications—

- (i) are requisite to meet the circumstances of the particular case; and
- (ii) are such that no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).

(7) The Director shall not make any modifications under sub-section (1)(b) above unless—

- (a) the percentage given by each of sub-sections (8) and (9) below is not less than 90 per cent;
- (b) the percentage given by sub-section (8) below is not less than 90 per cent and no relevant activities have been carried on by relevant licence holders; or
- (c) sub-section (10) below applies.

(8) The percentage given by this sub-section is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C + N}$$

where—

C = the number of consenting holders;

N = the number of non-consenting holders.

(9) The percentage given by this sub-section is the fraction given by the following formula expressed as a percentage, namely—

$$\frac{C}{C + N}$$

where—

C = the volume of gas to which relevant activities<sup>9</sup> carried on by consenting holders relate;

N = the volume of gas to which relevant activities carried on by non-consenting holders relate,

as estimated (in each case) by the Director on the basis of the information available to him.

(10) This sub-section applies where the Director is of the opinion—

- (a) that the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
- (b) that the modifications would remove or reduce the burden without removing any necessary protection; and
- (c) in the case of a licence under sub-section (1) or (2) of section 7A above, that the modifications are such that no holder of such a licence would be unduly disadvantaged in competing with other holders of such licences<sup>10</sup>.

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<sup>9</sup> There is uncertainty as to whether the expression relevant activity is intended only to distinguish shipping, transportation and supply or whether it permits a sub-division of such activities, for example into domestic and commercial supply.

<sup>10</sup> Contrast with the wording of (6)(b)(ii) above.

(11) Where at any time the Director modifies standard conditions under sub-section (2)(a) above for the purposes of their incorporation in licences under section 7 or 7A(1) or (2) above granted after that time, he shall publish the modifications in such manner as he considers appropriate.

(12) In this section, in relation to modifications of standard conditions under sub-section (1)(b) above—

‘consenting holder’ means a relevant licence holder who has consented to the modifications;

‘non-consenting holder’ means a relevant licence holder who has not so consented;

‘relevant activity’ means an activity to which the modifications relate and which is carried on in the period of twelve months immediately preceding the making of the modifications;

‘relevant licence holder’ means a licence holder whose licence incorporates the standard conditions.