

September 2002

**Review of the Licensing Application
Regulations**

**Supplement to the consultation
document**

Table of contents

1. Purpose of this document	1
2. Background.....	2
Policy context.....	2
The Application Regulations.....	3
Previous work.....	4
Structure of this document.....	6
3. Notices of application.....	8
Current arrangements.....	8
Publication of notices by Ofgem.....	10
Views invited	11
4. Schedule 1 – ‘General Particulars’ and ‘Details of Application’	12
General Particulars.....	12
‘Details of Application’	14
Views invited	15
5. Schedule 2 – ‘Financial information’, ‘Proposed business’ and ‘Expertise of applicant’	16
‘Financial information’ and ‘Proposed business’	16
Expertise of applicant	27
Views invited	28
6. Schedule 3 – ‘Further Information and Documents to Accompany an Application’	29
Information and documents currently required.....	29
Approach and current arrangements.....	30
Proposal for amendments.....	35
Views invited	37
7. Schedule 4 ‘Application Fees’	38

The current fees.....	38
Proposal to amend the fees	39
Views invited	39
8. Route to market for gas and electricity suppliers	40
Electricity supply	40
Gas shipping / supply.....	42
Ofgem’s view.....	44
Views invited	45
Appendix 1 The Application Regulations.....	46
Appendix 2 Further information and documents to accompany an application	47
Appendix 3 Application fees	63

1. Purpose of this document

- 1.1 This document is a supplement to the consultation document 'Review of the Licensing Application Regulations'. It sets out, in detail, the results of Ofgem's review of the current Application Regulations. It also describes Ofgem's proposals for the amendment of the Application Regulations.

2. Background

- 2.1 This supplementary document continues a consultation process about the licensing regime, by putting forward proposals to amend the current Application Regulations. To this end, it considers whether all the information and documents which applicants are currently required to submit to support an application are needed.
- 2.2 It also presents the results of an Ofgem review of entry testing arrangements and sets out the principles Ofgem will apply in assessing industry proposals to change these arrangements.
- 2.3 This document should be read in conjunction with the current Application Regulations. Copies of the current Application Regulations are included in Appendix 1.

Policy context

- 2.4 The Application Regulations are central to the licensing process which provides access to:
- ◆ the gas and electricity supply markets;
 - ◆ the gas shipping market;
 - ◆ the electricity generation market; and
 - ◆ the gas transportation, electricity transmission and electricity distribution markets.
- 2.5 The competitive gas and electricity markets have evolved considerably since the original Application Regulations were implemented. The review has sought to ensure that the Application Regulations reflect the developments which have taken place and ensure that they are still relevant. Particular attention has been given to the need to balance the burden on applicants with the needs of the regulator to protect customers and meet other policy objectives.

2.6 The review was conducted within the following policy framework:

- ◆ Ofgem’s principal objective in carrying out its functions is to protect the interests of customers, wherever appropriate by promoting effective competition. Ofgem must carry out its functions (for example, considering a licence application) in the manner it considers is best calculated to further that principal objective;
- ◆ in doing this Ofgem must have regard to the need to secure that licensees can finance their obligations under the Acts and licences;
- ◆ Ofgem does not consider that any check that it could perform on a potential licensee at the time of application, will provide continuing comfort about financial viability or probity once the licensee commences operations. There is a risk that market participants and customers mistakenly regard “licensed” as meaning “Ofgem approved” on a continuing basis;
- ◆ Ofgem aims to minimise regulatory burdens and maximise opportunities for new firms to enter competitive markets; and
- ◆ entry testing procedures, focusing on customer and information transfer processes, settlement and credit arrangements must be proportionate.

The Application Regulations

2.7 The Gas and Electricity Acts allow regulations to be made which provide a mechanism for those wishing to participate in the gas and electricity markets to obtain a licence¹. These Application Regulations set out the manner and form in which applications for licences (or extensions or restrictions of licences) should be made and the fee payable for each type of licence. In addition the Application Regulations specify the minimum information that applicants must provide in order for Ofgem to consider an application.

¹ Gas Act 1986 s7B and Electricity Act 1989 s6A(2) (as amended by the Utilities Act 2000).

- 2.8 The original Application Regulations implemented at the beginning of competition in the gas and electricity markets were precautionary in nature. They allowed, for the first time, new entrants to compete in a market whose systems and controls were untested at the time. The original Application Regulations set barriers to entry which sought to ensure that market entry was available to applicants who could demonstrate their ability to participate in the market (without endangering either the market, other participants or customers).
- 2.9 The current Application Regulations were made as part of the implementation of the Utilities Act 2000, following a public consultation process. Based on the original Application Regulations they sought to implement the changes brought about by the Utilities Act and align the arrangements for applications for gas and electricity licences. No fundamental review of the relevance of the requirements of the Application Regulations was carried out during the alignment process.
- 2.10 Ofgem considers that the market has evolved considerably since its inception. The systems and controls in place have successfully protected the integrity of the market, market participants and customers. Ofgem considers that it should now consider whether the precautionary approach which was originally taken is still appropriate. Ofgem considers that the protection afforded by the licensing process and the Application Regulations is only one small element of the protection afforded by the regulatory framework.
- 2.11 Ofgem considers that it is now appropriate to conduct a proper examination of the function of the licensing system. This examination should in particular examine the role of other bodies in providing protection for the market and customers and whether less significance should be attached to the licensing process itself.

Previous work

The guidance document

- 2.12 In March 2002 Ofgem published guidance setting out the objective and non-discriminatory criteria it uses when assessing applications for gas or electricity licences. The Guidance Document sought to:

- ◆ discharge Ofgem's duties under Directive 98/30/EC²;
- ◆ respond to views expressed by the Consolidation Working Group (CWG); and
- ◆ initiate a review of the licensing process.

The Consolidation Working Group

- 2.13 In August 2001 Ofgem reported to the Department of Trade and Industry (DTI) on the initial impact of the New Electricity Trading Arrangements (NETA) on smaller generators³. One of the findings of the review was that consolidation services did not appear to have developed as far as was feasible⁴. In response, the DTI and Ofgem set up the CWG to consider the issues raised by consolidators' and smaller generators' experiences of operating under NETA and to identify further measures necessary to facilitate the development of consolidation services.
- 2.14 The CWG suggested that the current process for obtaining a licence is over-burdensome and takes longer than necessary⁵. Ofgem responded by giving a commitment to review the current licensing procedures to establish what financial and business requirements are appropriate.

Ofgem initiatives

- 2.15 Ofgem currently has a number of initiatives that will make it easier for potential applicants to understand the licensing process. These include joint presentations (with MRASCo and Elexon) to potential entrants to the electricity supply market and the development of Application Handbooks to guide applicants through the licensing process.
- 2.16 The Application Handbooks will ensure that applicants are aware that once a licence is granted by Ofgem the licensee is bound by duties imposed by the Gas

² Directive 98/30/EC of the European Parliament and of the Council of 22nd June 1998 concerning common rules for the internal market in natural gas. Official Journal of the European Communities L204 21/07/1998 page 1.

³ "Report to the DTI on the review of the initial impact of NETA on smaller generators." Ofgem 52/01.

⁴ Consolidation services are those provided to allow smaller generators to take advantage of NETA trading opportunities without having to become a BSC Party, by operating through someone who is a Party.

⁵ "Report to the DTI of the Consolidation Working Group." Ofgem 09/02

and Electricity Acts and licence conditions. Applicants will be informed that they must understand the duties imposed by the licence and be in a position to comply with these duties as soon as the licence is granted. Where a licensee fails to comply with any licence condition or any duty, the licensee may be subject to enforcement action. Enforcement action may include the issue of enforcement orders, financial penalties and may lead to the revocation of a licence.

Structure of this document

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

- ◆ Chapter 3 explains the requirements for applicants to publish a notice of application. It proposes amending the requirement for applicants to publish notices. With the exception of applications for restrictions Ofgem proposes that notices should be placed exclusively on its website. Ofgem also proposes lengthening the time within which a notice of application must be published. It also proposes an amendment to Ofgem's current arrangements for publishing notices where it proposes to grant licences for gas transportation and electricity transmission;
- ◆ Chapter 4 sets out the information which applicants are required, by Schedule 1 of the current Application Regulations, to submit about themselves. It proposes retaining the need for applicants to submit information about directors and principal shareholders. It also proposes that Ofgem uses this information to check whether directors, sole traders, partners or principal shareholders are undischarged bankrupts. It proposes requiring the submission of a declaration about unspent relevant convictions. However it explains why Ofgem does not consider that any checks it can perform during the licensing process can guarantee the continuing probity of licensees;
- ◆ Chapter 5 sets out the information applicants are currently required to submit about the financing of their business, their business proposals and their expertise. It proposes amendments which will significantly reduce the regulatory burden for applicants. It also proposes that Ofgem should, before granting a licence, check to see that applicants are not insolvent;

- ◆ Chapter 6 sets out, for each licensable activity, the additional information and documents that Schedule 3 of the Application Regulations requires. It proposes amendments which will reduce the regulatory burden but recommends that the existing measures which directly regulate how licensees deal with domestic customers are retained;
- ◆ Chapter 7 discusses the application fees payable under the current Application Regulations. Implementation of the changes in chapters 5 - 8 will lead to a reduction in fees, although it is not yet possible to quantify the reduction;
- ◆ Chapter 8 summarises an internal Ofgem review of the industry testing which forms part of the route to market for gas and electricity suppliers. It gives an outline of the regulatory frameworks, a brief history of entry testing, and some proposed enhancements to the existing route to market;
- ◆ Appendix 1 contains copies of the current Application Regulations;
- ◆ Appendix 2 summarises the information which applicants are required to submit by Schedule 3 of the Application Regulations together with Ofgem's proposals for amendments;
- ◆ Appendix 3 presents the fees currently charged for gas and electricity applications.

3. Notices of application

3.1 This chapter explains the requirements for applicants to publish a notice of application. It proposes amending the requirement for applicants to publish notices. With the exception of applications for restrictions of licences Ofgem proposes that notices should be placed on its website. Ofgem also proposes lengthening the time within which a notice about an application for a restriction must be published. It also proposes an amendment to Ofgem's current arrangements for publishing notices where it proposes to grant licences for gas transportation and electricity transmission.

Current arrangements

- 3.2 The Gas and Electricity Acts require applicants for licences, extensions and restrictions of licences to publish notices of application in the manner prescribed by the Application Regulations⁶. The current Application Regulations specify where these notices must be published. Notices must be published, in the London and Edinburgh Gazettes and, where applications relate to specified areas, other newspapers circulating in the area specified in the application within 7 days of the application being made.
- 3.3 Respondents have questioned the value of these advertisements. The costs of placing advertisements can be substantial and few, if any, representations are received. Indeed one respondent claimed that in 2000 it spent £25,000 on placing advertisements for extensions in local newspapers but received only two representations.
- 3.4 Although it is difficult to be sure of the readership reached by the Gazettes, it seems reasonable to assume that it is limited to Government bodies, companies, and professional and legal service providers rather than members of the general public. The Gazettes therefore provide a rather limited channel through which interested parties may be reached.

⁶ Gas Act 1986 s7B(2) and Electricity Act 1989 s6A(3) (as amended by the Utilities Act 2000).

- 3.5 Ofgem considers that the current arrangements for publishing advertisements are, in the majority of cases, inappropriate. A search of Ofgem records has revealed that comments are rarely received from members of the public about notices of application which are published. Ofgem also accepts that in some cases, in particular where applications are made for extensions, the costs of placing adverts can be significant. These costs do not provide any tangible benefit to customers.
- 3.6 Ofgem has carefully considered alternatives to the present arrangements. It considers that, for all applications for licences and for extensions of licences, it would be more appropriate to require applicants to place a notice on a website, either Ofgem's own website (www.ofgem.gov.uk), or their own with a link from Ofgem's website. This will allow interested parties to comment on, object to and, raise issues about applications made. Applicants will be asked to provide notices in the required format which Ofgem will place on its website when it is satisfied that an application contains all of the required information. Ofgem also proposes to use its email distribution list to notify interested parties when notices of application are published on its website.
- 3.7 For restrictions of licences, however, Ofgem considers that it is appropriate to continue to require applicants to place advertisements in newspapers which circulate in the area which will be affected if a restriction is granted. Although licensees are obliged to make arrangements to ensure that customers affected by a licence restriction will remain connected and have a supply, a direct notification to affected customers would be a useful double-check. Notices of restrictions published in newspapers circulating in the area which would be affected provide an opportunity for relevant customers to consider alternative arrangements or make representations to Ofgem.
- 3.8 Applicants should only publish notices for applications for restrictions where Ofgem has confirmed that all of the information, documents and the fee required by the Application Regulations have been received.
- 3.9 Where an applicant is required to publish a notice Ofgem considers that the current 7 day time period does not provide sufficient time for:

- ◆ Ofgem to consider whether an applicant has included all the relevant information requested by the Application Regulations and write to applicants; and
- ◆ for applicants to place an advertisement in the publications required.

3.10 This issue was highlighted by respondents during the consultation exercise conducted for the current Application Regulations. The 7 day time limit was said to be particularly problematic during holiday periods. Ofgem proposes to amend the Application Regulations to extend the period within which a notice about a restriction must be published from 7 days to 10 working days. The extension of the time period within which a notice must be published will not inhibit an interested party's ability to bring to Ofgem's attention any information which it considers is of importance about an application.

3.11 Ofgem does not, except in exceptional circumstances (such as an urgent request for a temporary licence), grant a licence, or an extension or restriction of a licence until at least 28 days from the date that the notice of application has been published.

Publication of notices by Ofgem

3.12 Ofgem is required by the Gas and Electricity Acts to publish, in a manner it considers appropriate, notices where it proposes to grant:

- ◆ a gas transporter licence⁷; or
- ◆ an electricity transmission licence⁸.

3.13 Ofgem currently publishes these notices in the Edinburgh and London Gazettes. However Ofgem does not consider that the costs of the current procedure are proportionate to the benefit gained. These notices are published for the attention of a limited audience of interested parties. Ofgem considers that there are more cost effective methods of disseminating this information to interested parties.

⁷ Gas Act 1986 s7(6) (as amended by the Utilities Act 2000)

⁸ Electricity Act 1989 s6B(4) (as amended by the Utilities Act 2000)

- 3.14 Therefore Ofgem proposes to publish notices proposing to grant such licences on its website (www.ofgem.gov.uk) and via its licensing email distribution list. Ofgem will, in accordance with statutory requirements, continue to send copies of notices directly to the Secretary of State, the applicant and those holding either transporter or transmission licences in the area for which an application has been made. The Gas Act also requires Ofgem to notify the Health and Safety Executive where it proposes to grant a gas transporter licence.
- 3.15 This change to Ofgem's procedure for publishing notices proposing to grant a licence will be preceded by the publication of a notice in the London and Edinburgh Gazettes and The Financial Times informing interested parties of the change.

Views invited

- 3.16 Views are invited on any of the issues raised in this chapter and in particular on whether:
- ◆ the proposals for applicants to publish notices of application on the Ofgem website are appropriate;
 - ◆ there is a need for applicants for a restriction of a licence to place advertisements in newspapers circulating in the area which would be affected by any restriction; and
 - ◆ the proposals for Ofgem to publish notices where it proposes to grant a gas transporter or an electricity transmission licence are appropriate.

4. Schedule 1 – ‘General Particulars’ and ‘Details of Application’

4.1 This chapter sets out the information which applicants are required, by Schedule 1 of the Application Regulations, to submit about themselves and their applications. It proposes retaining the need for applicants to submit information about directors and principal shareholders. It also proposes checking whether directors, sole traders, partners or principal shareholders are undischarged bankrupts and requesting a declaration about any unspent convictions. It also sets out Ofgem's concerns about the potential for customers to draw false comfort from the fact that a licence has been granted.

General Particulars

4.2 A summary of the information currently requested and proposals for amendments of Schedule 1 – ‘General Particulars’ of the Application Regulations for all gas and electricity applications are set out in Table 1. While there are no proposals for amendments, the concerns that Ofgem has about assessing information about an applicant’s directors are explained below.

Table 1 – ‘General Particulars’

Section	Information requested	Proposal
1 (1) – (6)	Names and addresses of applicants and details for correspondence. Activity for which a licence is sought and whether the application is for a restriction or extension of a licence.	Retain
2 (1)	Status of the applicant – public limited company, private limited company, sole trader etc.	Retain
2 (2)	Where the applicant is a body corporate:	
2(2)(a)	The jurisdiction under which it is incorporated; and	Retain
2(2)(b)	Registered number if applicable.	Retain
2(2)(c)	Names and addresses of current directors	Retain
	Declaration about unspent criminal convictions in Great Britain or overseas.	Insert
2(2)(d)	Name and registered office of any holding company.	Retain
2(3)	Details of those in whom effective ownership of the applicant rests.	Retain
2(4)	Shareholders holding 20 percent or more of any class of the shares of the applicant.	Retain
2(5)	Licences already held or applied for under the Electricity or Gas Acts.	Retain

- 4.3 The information currently required by Schedule 1 (General Particulars) is vital to the licensing process. It provides basic information about the company and the type of application that is being made.

Directors and principal shareholders

- 4.4 Ofgem proposes that it should continue to check that directors, sole traders, partners or principal shareholders of applicants that apply for licences are not disqualified from being directors⁹. Ofgem also proposes to begin checking whether applicants are undischarged bankrupts. This information will be used to decide whether there are grounds for refusing the application, or as a lesser step for informing customers of any relevant information if a licence is granted.
- 4.5 Ofgem considers that the Application Regulations should also ask applicants to provide a declaration about any unspent criminal convictions in this country or overseas. It is an offence for any person, in giving any information or making an application, to make any statement which is false in a material particular, or to recklessly make any statement which is false in a material particular¹⁰. This information will be used to decide whether there are grounds for refusing the application. Ofgem may, on occasion, consider it appropriate to grant a licence, but inform the public they should be aware in dealing with the licensee that a sole trader, partner, director or principal shareholder had a relevant unspent conviction such as fraud. Ofgem will need to be very careful about the procedures that are followed in making this information public. Care will be taken to ensure that any information which is released is in either the public domain or is not commercially confidential nor prevented from being released by the requirements of the Data Protection Act 1998.
- 4.6 Ofgem does not consider that there are any checks that it could perform during the licensing process which would guarantee the continuing probity of licensees. Checking the information provided about directors on any particular day only provides information and protection on that day. The composition of a company's board of directors may change or directors may be convicted of offences at any time after the grant of a licence.

⁹ The Company Directors Disqualification Act 1986.

¹⁰ Gas Act 1986 s43 and Electricity Act 1989 s59 (as amended by the Utilities Act 2000)

- 4.7 There could also be others, who are not directors, within a company or financing it who hold convictions for offences such as fraud. Ofgem will consider whether there are grounds for revoking the licence if a company becomes insolvent. Ofgem is, however, unable to do so if a director becomes bankrupt or is disqualified.
- 4.8 Any ongoing requirement to check details of directors would:
- ◆ need to be extremely complicated and resource intensive to provide any comfort at all given that it will be exceptionally rare for applicants to have criminal intentions;
 - ◆ fail to prevent a determined effort to defraud customers or commit any other criminal offence; and
 - ◆ lead customers to wrongly believe that the checks provide a guarantee about the probity of the applicant.
- 4.9 Ofgem remains committed to careful regulation and will continue to seek to protect customers, once a licence is granted, through the enforcement of the conditions of a licence and the duties and obligations imposed by the Gas Act or Electricity Act. Ofgem will also, where it becomes aware of what it considers may be criminal activities, bring these activities to the attention of the proper authorities.

'Details of Application'

- 4.10 Applicants are required to specify any modifications to standard conditions which they consider are necessary within the 'Details of Applications' section of Schedule 1. A request for a modification must be justified by the applicant. Applicants must also confirm that the holder of a similar licence will not be unduly disadvantaged by any modification of a licence.
- 4.11 There is no proposal to amend the requirement for applicants to submit the information currently required under the 'Details of application' section of Schedule 1.

Views invited

4.12 Views are invited on any of the issues raised in this chapter and in particular:

- ◆ whether it is appropriate for Ofgem to check if an applicant's directors and principal shareholders are undischarged bankrupts; and
- ◆ the need for applicants to submit a declaration about unspent criminal convictions.

5. Schedule 2 – ‘Financial information’, ‘Proposed business’ and ‘Expertise of applicant’

- 5.1 This chapter sets out the information applicants are currently required to submit about the financing of their business, their business proposals and their expertise. It proposes amendments which will significantly reduce the moral hazard of a perception that Ofgem has guaranteed a licensee’s financial status. It also proposes that Ofgem should, before granting a licence, check to see that applicants are not insolvent.
- 5.2 These proposals will have no impact on Ofgem’s ability to monitor the financial status of licensees if they show signs of financial stress, nor Ofgem’s ability to operate effectively existing Supplier of Last Resort arrangements. They will, however, reduce the regulatory burden on applicants.

‘Financial information’ and ‘Proposed business’

- 5.3 Summaries of the information currently requested under Schedule 2 – ‘Financial Information’ and ‘Business Proposals’ - of the Application Regulations for all gas and electricity licences and proposals for amendments are set out in tables 2 and 3.

Table 2 – Financial information

Section	Information requested	Proposal
1.	Copies of the most recent audited annual reports and accounts of the applicant and if relevant parent or group. Audited annual reports and accounts for the previous two years and any interim accounts or management accounts for the current year.	Omit
2.	For applicants which are not a company any accounts or information which indicate the financial state of affairs.	Omit
3.	An explanation of why any documents have not been supplied.	Omit
4	A statement giving further particulars (if any) of financial projections, source of finances etc which may be relevant.	Omit

Table 3 – Proposed business

Section	Information requested	Proposal
5	Outline statements of business proposals.	Omit
6	Capital outflows.	Omit
7	Net cash flows.	Omit

Ofgem's duty

- 5.4 Ofgem has a duty to carry out its functions in a manner 'best calculated' to further its principal objective of protecting the interests of consumers having regard to the need to secure that licensees are able to finance the activities which are the subject of obligations imposed¹¹.
- 5.5 In discharging its duties Ofgem must have regard to the legislative framework in which it operates and the role of other statutory bodies. Ofgem is unable to take account of issues which fall outside of its duties, such as aggressive or questionable accountancy practices. It can, however, notify relevant enforcement bodies, such as the DTI or Financial Services Authority (FSA), where it becomes aware of such issues. When it accepts information submitted Ofgem is neither giving a seal of approval to the information submitted nor, in granting a licence, giving a seal of approval to the applicant.
- 5.6 Respondents to the consultation on the current Application Regulations and criteria document expressed concern about the potential for the failure of market participants. Respondents suggested that:
- ◆ Ofgem must endeavour to verify the credit worthiness of all applicants and ensure that new entrants are able to finance their businesses;
 - ◆ the current arrangements should be strengthened to require more details of financial cover including parent company guarantees or credit ratings; and
 - ◆ an alternative to the supply of financial information could be through the use of financially binding performance bonds.

¹¹ Gas Act 1986 s4AA(2)(b) and Electricity Act 1989 s3A(2)(b) (as amended by the Utilities Act 2000)

Current financial tests

5.7 The current Application Regulations request information which enables Ofgem to determine the credit worthiness of an applicant and its ability to finance its business through the submission of financial information which includes audited accounts and reports and details of the applicant's business proposals (business plans) for the next five years. However, Ofgem considers that the use of audited reports, accounts and business plans to verify an applicant's financial viability is fundamentally flawed in that:

- ◆ audited accounts are retrospective, they set out an applicant's or a parent company's previous financial performance and provide no guarantee of future financial performance;
- ◆ Ofgem recognises that new entrants may not be able to provide detailed accounts and considers that it is important that the licensing process does not discriminate against any class of licence applicant. It is important that new companies applying for licences do not face unnecessary or discriminatory barriers to entry; and
- ◆ details submitted by an applicant of its business plans for the next five years are at best an indication of an applicant's intentions and predictions.

5.8 During the licensing process Ofgem can do little to check business plans other than to ensure that the assumptions and predictions made for sales and costs are reasonable. Once a licence is granted Ofgem cannot hold a licensee to a business plan. While its delivery depends on a licensee's competence even a well researched business plan may be overtaken by events beyond the control of a licensee. Ofgem considers that the assessment of business plans provides no continuing guarantee of an applicant's ability to finance its business.

5.9 Although the Application Regulations do not specifically call for their submission, parent company guarantees (PCG) have been used by Ofgem to try to ensure that an applicant will be able to finance its business. Ofgem now views this use of PCGs as potentially discriminatory and therefore inappropriate.

A requirement for a new entrant to provide a PCG could prevent independent new entrants gaining a licence.

- 5.10 A PCG does not guarantee the survival of the subsidiary company. Failure of the parent company may well lead to the failure of any subsidiary company. At best PCGs are signals of intent that the parent will support the subsidiary. Ofgem has no means of enforcing a PCG supplied during the licensing process or of securing financial support from the parent company.
- 5.11 Approved credit ratings (ACRs) have also been used by Ofgem as a means of trying to ensure that an applicant will be able to finance its business. ACRs are assigned to companies by specialist credit rating agencies. These credit rating agencies assign rating grades to organisations by assessing the degree of credit risk. A credit rating is the credit rating agency's opinion of the credit worthiness of an organisation. Previously, Ofgem has examined applicants' credit ratings.
- 5.12 Ofgem now views the use of ACRs in this way as discriminatory. Reliance on ACRs could deter independent new entrants. A company's credit rating may also change once a licence is granted, either as a result of a change in company policy or as poor performance or other factors become apparent. Enron's rating fell rapidly from investment grade as its results and accounting practices were questioned.
- 5.13 The use of transferable financially-binding performance bonds has also been suggested by respondents as alternatives to the submission of financial information. Ofgem considers that although requiring applicants to obtain bonds may help to limit the effects of a default it would not guarantee an applicant's ability to finance its business.
- 5.14 Ofgem also considers that obtaining a licence to participate in the gas and electricity markets will, for most applicants, be a less onerous process than obtaining funds from financial institutions or parent companies. Licensees will need funds to implement the systems and processes required to operate under industry agreements. Funds will also be needed to satisfy entry testing procedures. Financial institutions or parent companies will be able to demand and be capable of conducting far more rigorous tests than Ofgem. This is especially true for the assessment of an applicant's business plans.

5.15 For these reasons Ofgem has stated that it does not consider that any check that it could perform on a potential licensee at the time of application will provide continuing comfort about financial viability once the licensee commences operations. The failures of both Enron and Independent Energy demonstrate the shortcomings of any ex ante tests of financial viability¹². During the licensing process both companies were subject to the financial tests discussed but still subsequently failed.

Competitive and network licensees

5.16 The Acts provide access through the grant of licences to:

- ◆ competitive markets in gas and electricity supply, electricity generation and gas shipping; and
- ◆ the network operations of gas transportation, electricity transmission and electricity distribution where licensees operate as monopolies in their authorised areas.

5.17 The businesses carried out by competitive and network company licensees are different in nature. Network companies run the infrastructure which competitive licensees use to access customers. The cost of building and maintaining network infrastructure is significant, and the risks of this investment are allocated and quantified through the regulatory process.

5.18 New entrants are required to become parties to agreements and satisfy certain obligations before they can become active participants in the markets. These arrangements aim to protect operators of networks and other market participants from the impacts of failure or bad debt. Further details of the route to market for gas and electricity suppliers are set out in chapter 8.

Competitive market licensees

5.19 Entry testing procedures carried out by system operators (Transco and National Grid Company) and in the case of electricity supply MRASCo and Elexon seek to

¹² The provision of information in advance of the granting of a licence can be referred to as 'ex ante' provision.

protect existing licensees and market systems against the potential for negative impacts of the new entrants.

- 5.20 Electricity suppliers and gas suppliers (through arrangements made with gas shippers) use the network companies' infrastructure to supply gas and electricity to customers. Those using this infrastructure are required to pay use of system charges and to meet the financial implications of balancing the flow of energy into and out of a network.
- 5.21 Gas shippers are responsible for paying the charges levied by gas transporters for the use of their systems as well as for meeting the financial implications of balancing daily gas flows in and out of Transco's network. Transco's Code Credit Rules prescribe the form and level of credit cover that a shipper must provide for transportation charges before it starts trading. Transco's Energy Balancing Credit Rules (part of its Network Code) also set out the form and level of credit cover that shippers must provide to support their energy balancing activities before they can start trading.
- 5.22 Electricity suppliers are responsible for paying the charges levied by the National Grid Company (NGC) and distribution companies for the transmission and distribution of electricity to customers. Both the NGC and distribution companies require electricity suppliers to provide security cover for charges which may be incurred before they start trading. Electricity suppliers and generators are also required to become parties to the Balancing and Settlement Code (BSC). The BSC requires electricity suppliers to provide credit cover for liabilities that may arise between the actual and contractual positions of Trading Parties. All Trading Parties must provide the required level of credit cover before they begin trading.
- 5.23 Ofgem considers that while the current arrangements do provide some protection network companies may still be exposed to bad debt. The cost of failure is eventually borne by some or all customers. Ofgem has published a consultation document on the current arrangements for gas and electricity supply and gas shipping credit cover¹³. Ofgem is seeking an appropriate way to

¹³ "Arrangements for gas and electricity supply and gas shipping credit cover." Consultation document. Ofgem 24/03

manage the risk of failure, protect network operators and minimise the overall cost of potential and actual failure.

Proposals for dealing with competitive market licensees

- 5.24 Ofgem has carefully considered the protection that ex ante tests of an applicant's financial viability provide. It considers that the current entry testing arrangements, including those arrangements for dealing with the costs of failure, provides a greater level of protection for network companies, market participants and customers than any ex ante check of financial viability it could perform during the licensing process. Ofgem, therefore, considers that ex ante tests of an applicant's financial viability are an unnecessary barrier to entry which should be removed.
- 5.25 Respondents, particularly network companies, have previously raised concerns about the potential impacts of the lowering of any barriers to entry. Respondents believe that this may lead to a greater likelihood of default by suppliers. Defaults and failures would, it is argued, lead to a loss of revenue, additional costs for customers as a result of Supplier of Last Resort (SoLR) services and impacts on the network companies' cost of capital.
- 5.26 Ofgem recognises that company failure and default may result in costs which are borne by both customers and other parties which have obligations under licence conditions or industry codes. While Ofgem considers that the systems which are in place have, since their inception, operated successfully, there is some room to improve the arrangements for securing credit cover. Ofgem has a role in ensuring that credit cover arrangements remain relevant and effective. In March 2002 it published a consultation document about the costs to which parties in the gas and electricity markets are exposed when a gas or electricity supplier or a gas shipper fails¹⁴. That consultation document set out Ofgem's views on current arrangements for credit cover and proposes possible alternatives.
- 5.27 Ofgem must carry out its functions in a manner best calculated to further its principal objective of protecting the interests of customers. Promoting effective competition through the reduction of barriers to entry is a key component of this

¹⁴ 'Arrangements for gas and electricity supply and gas shipping credit cover.' Consultation document Ofgem 24/02.

principal objective. Ofgem must also have regard to the need to secure that licensees are able to finance the activities which are the subject of obligations imposed¹⁵.

5.28 Ofgem considers that the best way to fulfil its duty to have regard to a licensee's ability to finance its activities is by specific discussions with licensees if it becomes known that they are in some financial difficulty. Ofgem is made aware of a company's financial difficulties by other licensees when, for example, it has difficulties paying its bills.

5.29 Ofgem will continue to have regard to an applicant's ability to finance its activities during the licensing process. While it will not routinely request or assess financial information Ofgem may decide that it is necessary to request its submission where for example:

- ◆ information or an objection is received as the result of a notice of application being published by an applicant;
- ◆ Ofgem is made aware of developments in the market or in an applicant's business which may affect its ability to finance its activities;
- ◆ a previous application for a licence has been refused or a licence held has been revoked; or
- ◆ Ofgem is aware that a director, sole trader, partner or principal shareholder is an undischarged bankrupt or has a relevant unspent conviction.

5.30 Although we are proposing that we cease to request much of the information during the application process, Ofgem's powers to request it once a licence has been granted will remain unchanged. Ofgem will continue to use these powers as necessary. Ofgem does not expect licensees to perceive any difference in frequency of ex post information requests.

5.31 As a means of ensuring that those to whom we are about to grant licences are not insolvent Ofgem will check the applicant's details with the DTI Insolvency Service before a licence is granted.

¹⁵ Gas Act 1986 s4AA(2)(b) and Electricity Act 1989 s3A(2)(b) (as amended by the Utilities Act 2000)

Network companies

- 5.32 Network companies (gas transportation, electricity distribution and electricity transmission) require significant funding to build and maintain the network infrastructure on which the market relies. Ofgem considers that securing the funding necessary to build these networks will be a more challenging barrier to entry than any ex ante test of financial viability that can be conducted under the licensing process. Financial institutions or parent companies will be able to demand and be capable of conducting far more rigorous tests than Ofgem. This is especially true for the assessment of an applicant's business plans.
- 5.33 The concerns expressed about ex ante tests of an applicant's financial viability through audited reports, accounts and business plans are as relevant for network companies as for competitive companies. There is no reason for Ofgem to have confidence that any ex ante tests of financial viability would provide continuing comfort for network companies when these tests do not provide comfort for competitive market licensees.
- 5.34 Licences granted for network companies may also include standard conditions which may contribute towards ongoing financial viability. The National Grid Company (NGC), Transco and the existing electricity distribution network operators have a licence requirement to secure the necessary resources, including financial resources, to carry out their obligations under their licence. NGC, Transco and the existing electricity distribution network operators must use all reasonable endeavours to maintain an investment grade rating.

Proposals for dealing with network companies

- 5.35 Ofgem considers that the barrier to entry imposed by the need for applicants for network companies to obtain funding provides a greater level of protection for market participants and customers than any ex ante test of financial viability it could perform during the licensing process. Ofgem considers, therefore, that ex ante tests of an applicant's financial viability are an unnecessary barrier to entry which should be removed.
- 5.36 Ofgem considers that it is more appropriate to discharge its duty to have regard to a network licensee's ability to finance its obligations and to protect customers

supplied on newly licensed networks and market participants through the development of appropriate regulatory regimes.

5.37 Ofgem has published a consultation document on the regulation of Independent Gas Transporter (IGT) charging¹⁶. That consultation document proposed a set of guiding economic and commercial principles which will be used by Ofgem during a review of the regulation of IGT charging.

5.38 These principles derive from Ofgem's statutory duties and include:

- ◆ promoting effective competition where appropriate:
 - a) between connection providers;
 - b) within gas transportation; and
 - c) between gas shippers and between gas suppliers.
- ◆ regulating where competitive pressures are not sufficient by:
 - a) promoting efficiency of IGTs;
 - b) sharing efficiency gains with consumers;
 - c) allowing a reasonably efficient IGT to make a reasonable profit and to finance its activities;
 - d) promoting the efficient use of gas through cost- effective charges; and
 - e) protecting the interests of consumers in rural areas.

¹⁶ 'The regulation of Independent Gas Transporter charging.' Consultation document Ofgem 37/02.

5.39 Ofgem has also published proposals about the regulation of Independent Electricity Distributors (IEDs)¹⁷. These proposals set out interim arrangements to ensure that the interests of customers are properly protected pending the results of an ongoing wide ranging review of IED regulation. In particular Ofgem proposes to:

- ◆ introduce a special price control licence condition for IEDs requiring that the licence holder's charges for use of its electricity distribution network to enable supply to domestic consumers should not exceed those charges that would be made in similar circumstances by the licensee in whose service area the network is located;
- ◆ require new IEDs under standard licence condition 5 to produce a statement setting out the criteria they would use to measure their security and availability of supply and quality of service; and
- ◆ to introduce the financial ring fencing conditions in IED licences together with a new special licence condition to protect certain licensed activities from adverse financial circumstances.

5.40 Ofgem intends to publish draft proposals for the regulation of Independent Gas Transporters in the autumn 2002. Ofgem is currently working on the drafting of the new licence conditions for the Independent Electricity Distributors.

5.41 The Utilities Act 2000 establishes a framework for physically separate electricity distribution and supply companies. Applicants for an electricity distribution licence should be able to satisfy Ofgem that the electricity distribution business will remain physically separate from any licensed supply business in which the applicant holds an interest.

5.42 Ofgem considers that as there is no test, however onerous or demanding, that will provide continuing comfort once the licence holder commences operations, it should instead concentrate on ensuring, through licence conditions, that customers and other market participants are protected from the effects of a failure.

¹⁷ 'Open letter on the regulation of new electricity distribution licence holders.' Ofgem 31 May 2002.

- 5.43 Issues raised by respondents about the potential impacts of company failure and default are as relevant for network companies as for gas and electricity suppliers and gas shippers. Ofgem considers that the ongoing work, including that for ensuring that licences contain suitable conditions such as ring fencing of activities is the most appropriate means of protecting customers and other market participants from the impacts of failure and default.
- 5.44 Ofgem will continue to have regard to a network applicant’s ability to finance its activities during the licensing of network companies in the same manner as it will for applicants for competitive licences. While it will not routinely request or assess financial information Ofgem may decide that it is necessary to request its submission in circumstances such as those set out in paragraph 5.29.
- 5.45 Ofgem does not expect licensees to perceive any difference in the frequency of ex post information requests.
- 5.46 As a means of ensuring that those to whom we are about to grant licences are not insolvent Ofgem will check the applicant’s details with the DTI Insolvency Service before a licence is granted.

Expertise of applicant

- 5.47 The current Application Regulations require applicants to provide details of their expertise in relation to the activity for which a licence is sought.

Table 4 – Expertise of applicant

Section	Information requested	Proposal
8	Particulars of the applicant, and of subcontractors or other persons on whose expertise the applicant proposes to rely.	Omit

- 5.48 The original gas and electricity Application Regulations reflected a precautionary approach to granting licences. The Application Regulations sought to ensure that applicants would be capable of carrying on the activity for which they had been granted a licence. It was considered necessary to ensure that new entrants had the skills and expertise necessary to operate without endangering the new gas and electricity markets.

- 5.49 These markets have functioned successfully since their inception and the number of competitors and specialist contractors and consultants offering their services has grown significantly. There is now, therefore, a significant pool of expertise available. The administrative testing arrangements controlling the route to market for new entrants have also operated successfully, protecting customers, the network companies and other market participants.
- 5.50 Furthermore while Ofgem could check that an applicant has the expertise needed during the licensing process it can give no guarantee that any licensee retains the expertise which will ensure its long term viability. Customers or applicants may believe that requesting information before a licence is granted constitutes in some way a guarantee that the applicant has the expertise necessary for its long term viability.
- 5.51 Ofgem considers that the gas and electricity markets have evolved considerably since their inception. The entry testing mechanisms and arrangements between market participants have been shown to be highly effective. Requesting information about expertise represents a barrier to entry which provides no protection above and beyond the arrangements that exist between market participants and entry testing processes. For this reason Ofgem considers that it is now inappropriate to continue to request information about an applicant's expertise.

Views invited

- 5.52 Views are invited on any of the issues raised in this chapter and in particular on whether:
- ◆ it is appropriate to remove the need for applicants routinely to submit financial information about their businesses;
 - ◆ Ofgem should check that applicants for a licence are not insolvent before granting a licence; and
 - ◆ whether there is a need for applicants to submit information about their expertise.

6. Schedule 3 – ‘Further Information and Documents to Accompany an Application’

- 6.1 This chapter sets out, for each licensable activity, the additional information and documents that Schedule 3 of the Application Regulations requires. It proposes amendments which will reduce the regulatory burden but recommends that the existing measures which directly regulate how licensees deal with domestic customers are retained.
- 6.2 These proposals will have no impact on Ofgem’s ability to monitor market activity. Licence enforcement action is invariably based on fresh information, rather than that submitted as part of a licence application. Therefore these proposals have no impact on Ofgem’s ability to secure compliance with licence obligations.

Information and documents currently required

- 6.3 A summary of the information which applicants are required by Schedule 3 to submit together with Ofgem’s proposals are set out in Appendix 2. The Application Regulations are organised as follows:
- ◆ Schedule 3 of the Gas Application Regulations:
 - Part I – Gas Supply licence;
 - Part II – Gas Shipper licence; and
 - Part III – Gas Transporter licence.
 - ◆ Schedule 3 of the Electricity Application Regulations
 - Part I – Electricity Generation licence;
 - Part II – Electricity Transmission licence;
 - Part III – Electricity Distribution licence; and
 - Part IV – Electricity Supply licence.

- 6.4 The Guidance Document sets out the objective and non-discriminatory criteria Ofgem uses when it assesses an application. It identifies those components of the current Application Regulations which are used in the determination of an application.
- 6.5 Of the small subset of information requested and used to determine an application, most is about codes of practice or statements for social or environmental obligations.
- 6.6 The majority of the information and documents currently required but which are not used in the decision making process are:
- ◆ 'background' information;
 - ◆ information about methodologies and codes such as charging methodologies and network codes;
 - ◆ information which sets out the need for licensees to reach agreements or arrangements with industry bodies and other participants in the market; and
 - ◆ information such as that about safety of systems for which other organisations take the lead.

Approach and current arrangements

- 6.7 The original gas and electricity Application Regulations adopted a precautionary approach to granting licences. The Application Regulations sought to ensure that applicants would be capable of carrying on the activity for which they had been granted a licence.
- 6.8 This approach imposed a significant barrier to entry for new entrants ensuring that the new markets in electricity and gas, other gas and electricity market participants and customers would be protected. This was justified during the early years of the gas and electricity markets. However, the gas and electricity markets have evolved significantly since their inception and arrangements in place to protect market participants have, overall, functioned successfully.

6.9 In reviewing the need to request information from applicants Ofgem has, during the review of Schedule 3, considered whether the request of information justifies a barrier to entry. Ofgem has considered whether the information requested affords a level of protection to the market, customers and other market participants above that delivered by other means such as entry testing processes. It has also considered whether the information supplied provides any tangible benefit to Ofgem, above what can be secured through Ofgem's wider information gathering powers. In addition Ofgem has considered whether the ex ante provision of information may be justified where:

- ◆ evolved Ofgem working practice has established the need for the examination, before a licence is granted, of how the applicant will comply with the relevant part of the licence; and
- ◆ information which is requested during the licensing process continues to be relevant after a licence is granted.

Protecting customers

6.10 The current Application Regulations seek to provide protection for customers and existing licensees through the ex ante provision of information about a licensee's ability to discharge its duties and obligations. Information is usually provided in the form of statements and proposals. By making applicants think about the way in which they will discharge their duties Ofgem seeks to gain some reassurance of future compliance.

6.11 Although a statement or proposal provided during the licensing process may provide some reassurance, it does not guarantee compliance once a licence has been granted and operations commence. Nevertheless Ofgem considers there is a need to ensure that domestic customers are adequately protected as soon as a licence is granted. Ofgem regards the submission, during the licensing process, of proposed arrangements for compliance with social and environmental obligations and codes of practice as extremely important. This applies to applicants for gas and electricity domestic supply, gas transporter and electricity distribution licences. Ofgem considers that the need to protect domestic customers justifies the presence of this barrier to entry.

- 6.12 Ofgem considers that there is not the same need to ensure that non domestic customers and customers of shippers are protected through the ex ante provision of information about social and environmental obligations and codes of practice. Licence conditions will continue, however, to require shippers and non-domestic suppliers to submit information and codes of practice relating to social and environmental obligations for approval outside of the licensing process.

Behavioural conditions

- 6.13 Many duties and obligations are behavioural in nature and there is often little effective testing that Ofgem can do before a licence is granted. Obligations imposed by licences, such as procedures for the detection and prevention of theft or abstraction, may require relationships to be established between suppliers, shippers, distributors and transporters. Ofgem does not consider that ex ante provision of information is a suitable way to achieve compliance with obligations which require relationships to be established. Ofgem does not consider that requiring applicants to submit a statement confirming that they will enter into agreements or establish relationships with other market participants provides any significant level of protection.
- 6.14 Ofgem remains committed to careful regulation and will use its enforcement powers, where appropriate, to secure compliance with standard licence conditions such as those which require agreements or relationships to be formed. Ofgem considers that the barrier to entry which this requirement imposes should, therefore, be removed.

Market entry testing

- 6.15 Existing licensees and market systems are protected through entry testing procedures carried out by system operators (Transco and National Grid Company) and in the case of electricity supply MRASCo and Elexon. In the case of the electricity markets these entry processes are imposed by licence conditions. These market testing procedures impose a significant barrier to entry to new entrants. In the gas markets there is no formalised entry testing of shippers. However, Transco sets requirements for the use of the Transco network which must be met by shippers.

- 6.16 New licensees must, where appropriate, be able to comply with system operators' requirements such as the Network Code and Grid Code as well as becoming parties to the Connection and Use of System Code and the Balancing and Settlement Code. Further details about the entry testing process and the route to market for gas and electricity suppliers are set out in chapter 8.
- 6.17 Ofgem is satisfied that entry testing procedures are the appropriate place for these checks and that Ofgem should not, therefore, seek to duplicate these procedures in the Application Regulations.

Background information

- 6.18 Much of the information currently submitted has been regarded by Ofgem as background information which may, at some point in the future be useful. Background information may include details about the number of premises that are to be supplied and the arrangements which have been made for purchasing of gas and for ensuring security of supply. This information, supplied during the licensing process, may quickly become out of date and irrelevant.
- 6.19 Ofgem considers that requesting background information provides no benefit or significant level of protection for customers or market participants. It rapidly goes out of date, and so is rarely used for licence enforcement. The barrier to entry which the need to supply background information imposes should therefore be removed.

Ensuring that licensed activities are safe

- 6.20 Ofgem has a duty to protect the public from any dangers arising from licensed gas and electricity activities¹⁸. It also has a duty to consult the Health and Safety Executive (HSE) about all electricity and gas safety issues¹⁹ and, must consult the HSE where it proposes to grant a gas transporter licence²⁰.
- 6.21 Gas transporters are required to prepare a safety case, submit it to the HSE and have it accepted before commencing operations²¹. This safety case must include details of the operations that are intended and pipe-lines, premises and plant to

¹⁸ Gas Act 1986 s4AA(5)(b) and Electricity Act 1989 s3A(5)(b) (as amended by the Utilities Act 2000).

¹⁹ Gas Act 1986 s4A and Electricity Act 1989 s3C (as amended by the Utilities Act 2000).

²⁰ Gas Act 1986 s7(6)(b)(as amended by the Utilities Act 2000).

²¹ Gas Safety (Management) Regulations 1996. SI 551.

be used. Operators of electricity networks are required to design, construct, maintain and operate their systems in accordance with the requirements presently set out in the Electricity Supply Regulations 1988²². The Electricity Supply Regulations are enforced by Department of Trade and Industry (DTI) Engineering Inspectorate who take the lead in ensuring safe supply of electricity, safe consumer connections and meter installation, the safety of networks and the general safety of the public.

- 6.22 Ofgem considers that it should not duplicate the duties of either the HSE or DTI Engineering Inspectorate but should seek instead to protect the public through liaison. Ofgem will notify the DTI Engineering Inspectorate where it grants a distribution licence and the HSE where it proposes to grant a gas transporters licence. The Application Handbooks will set out clearly the need for gas transporters to submit a safety case for HSE approval and for electricity distributors to comply with the requirements of the Electricity Supply Regulations.
- 6.23 The current requirement for applicants for gas transporter, electricity distribution and electricity transmission licences to provide information to Ofgem about the safe operation of their systems, provides no additional benefit above that already provided by the HSE and the DTI Engineering Inspectorate. Ofgem considers that the administrative burden imposed by the request of this information should, therefore, be removed.

Arrangements relating to network companies' charges and methodologies

- 6.24 Information currently requested by the Application Regulations includes details about network companies' proposals for use of system charges and charging methodologies. Chapter 6 sets out Ofgem's view that it is more appropriate to discharge its duty to have regard to a network company's ability to finance its activities through the development of appropriate regulatory regimes.
- 6.25 This is a time of significant change for independent new-entrant network businesses. The regulatory regime currently being developed will focus on, amongst other issues, use of system charges and charging methodologies. Those considering applications for network licences would be advised to begin

²² The Electricity Supply Regulations 1988 (as amended). SI 1057.

discussions with Ofgem about the appropriateness of proposed use of system charges and charging methodologies at an early a stage as possible. Network licences impose obligations on licence holders about charges and methodologies. Holders of these licences have obligations not to discriminate between customers or users of their network when establishing charges and Ofgem has powers under the Acts, licence conditions and the Competition Act to protect customers.

- 6.26 Ofgem has no formal role in approving or accepting an applicant's proposals for charging arrangements. By requesting information about charges and charging methodologies during the licensing process and then granting a licence, Ofgem may give licence holders the false impression that it has approved the charges and methodologies proposed in their applications. Ofgem considers that the requirement for applicants for network licences to provide details about charges and charging methodologies should, therefore, be removed.

Proposal for amendments

- 6.27 Ofgem proposes to remove from the current Application Regulations the requirement for an applicant for gas transporter, electricity distribution and electricity transmission licences to submit information about the safe operation of the applicant's pipe-line or electricity network. The proposed changes mean that Ofgem will cease to require the submission of much of the information currently required by Schedule 3 of the Application Regulations. Ofgem's ex post powers to request information will remain unchanged and will be used to gather further information where necessary²³. Since this will align the Application Regulations with Ofgem practice Ofgem does not expect licensees to perceive any difference in the frequency of ex-post information requests.

Applications for licences

- 6.28 It is proposed that applicants will be required to submit the following:
- ◆ information which clarifies the application being made including, where appropriate, maps of the areas for which the application relates;

²³ The provision of information after the granting of a licence can be referred to as ex post provision.

- ◆ information about social and environmental codes of practice for domestic gas and electricity suppliers and gas transporters and electricity distribution; and
- ◆ details about arrangements for meter provision.

6.29 Applicants will be advised through the Application Handbooks of the need to ensure that they are in a position to comply with licence conditions as soon as a licence is granted. These handbooks will advise applicants to discuss their intentions to comply with conditions and other duties with Ofgem before the submission of an application. The handbooks will also set out Ofgem's intention to take enforcement action, where appropriate, to ensure that licensees comply with the licence conditions. There is provision to suspend an application to allow an applicant time to ensure that it can comply with all licence conditions.

Extensions of licences

6.30 Ofgem proposes no amendments to the requirements for applicants for extensions of licences to provide information or documents. Information or documents need only be submitted where, in any material respect, they differ from or add to the most recent information or documents supplied for an application or in pursuance of a condition of the applicant's licence.

Restrictions of licences

6.31 Ofgem proposes to amend the requirement for applicants, for restrictions, to provide information or documents. An applicant for a restriction will continue to be required to submit the following information:

- ◆ information or documents where, in any material respect they differ from or add to the most recent information or documents supplied for an application or in pursuance of a condition of the applicant's licence; and
- ◆ where appropriate, information about arrangements for ensuring continuity of supply and that customers remain connected.

6.32 Ofgem proposes, however, to amend the wording of the Application Regulations. The amendments will set out the information which Ofgem needs to assess so that it can ensure continuity of supply and that customers remain connected.

Views invited

6.33 Views are invited on the issues raised in this chapter and in particular on whether it is appropriate to remove the need for applicants to submit much of the further information and documents currently requested.

7. Schedule 4 'Application Fees'

7.1 This chapter discusses the fees payable under the current Application Regulations. It proposes a reassessment of the fees once the consultation process has finished and the resources which will be needed to process an application have been assessed.

The current fees

7.2 The fees payable under the current Application Regulations are set out in Appendix 3. The current fees were set at a level to reflect the costs of processing applications and were formulated in line with The Treasury's 'Fees and Charges Guide'²⁴. This guide sets out the rules applying to charges for the provision of licences, which is a 'Statutory Service' (as opposed to a service provided commercially). Such charges must be set so as to recover full costs, including an appropriate share of overheads.

7.3 Respondents to the public consultation exercise conducted prior to the implementation of the current Application Regulations raised a number of concerns about application fees. These included:

- ◆ concerns over the levels of increases in fees;
- ◆ the 'premium' payable for an application for a domestic supply licence;
- ◆ the level of fees for extensions; and
- ◆ the need for a fee for joint applications for both gas and electricity supply licences.

7.4 Ofgem considers that the increases in fees from the original Application Regulations indicated that the fees originally set were unrealistically low. The fees set for the current Application Regulations were calculated according to officer time required to process applications.

²⁴ HM Treasury's 'Fees and Charges Guide.' HMSO 1992.

- 7.5 Ofgem is unable to alter the fees charged for applications without making new Application Regulations. The fees set in 1990 and 1986 for electricity and gas applications respectively, had not been amended in the intervening period. Fees charged had not therefore kept track with inflation prior to the increases made in 2001.
- 7.6 Applications for domestic supply licences require the submission of more information than for non-domestic supply. The processing of applications for domestic licences under the current Application Regulations therefore requires more officer time and, as a result, higher application fees. Similarly the fees set for applications for extensions reflect officer time required to process the application.
- 7.7 The Gas and Electricity Acts make no provision for joint applications for a combined gas and electricity supply licence and applicants must therefore make separate applications for these licences. These applications must be processed separately by Ofgem.

Proposal to amend the fees

- 7.8 Once the consultation process has been completed and Ofgem is able to assess the resources that will be required to process an application, the application fees will be reassessed.

Views invited

- 7.9 Views are invited on the issues raised in this chapter and in particular whether the current fees should be reassessed once the consultation process has finished and the resources needed to process an application have been established.

8. Route to market for gas and electricity suppliers

- 8.1 This chapter summarises the outcome of an internal review of the reasons behind the disparity between the route to market for gas and electricity supply. It gives an outline of the regulatory frameworks, a brief history of entry testing, and some proposed enhancements to the existing route to market.

The route to market

- 8.2 Organisations wishing to become licensed suppliers of electricity and shipper of gas are required to fulfil administrative testing requirements before they are permitted to commence trading in the live market. Both markets require new entrants to obtain relevant licences and to become parties to core industry agreements. However the electricity supply core industry agreements (the Balancing and Settlement Code (BSC), the Settlement Agreement for Scotland (SAS) and the Master Registration Agreement (MRA), with which suppliers must comply in order to meet licence obligations, require potential entrants to complete systems and procedure tests while no such assessment is made of new entrants to gas shipping or supply.

Electricity supply

Industry agreements

- 8.3 A licensed electricity supplier wishing to operate across Great Britain must become a party to anything from 20 to 60 separate agreements, either to satisfy licence obligations or out of operational necessity. The standard licence conditions require a supplier to become a party to and comply with the MRA (MRASCo), the BSC (Elexon), the SAS (SESL), the Grid Code, the National Grid Company's (NGC) Connection and use of System Code (CUSC), and Distribution Code(s) (Distribution Businesses). A supplier is effectively unable to operate in accordance with industry practice unless it becomes a party to the Data Transfer Service Agreement (Electralink), DUoS agreements (Distribution Businesses) and agreements with supplier hub agents (Data Collectors, Data Aggregators, Meter Operators). While a few of these organisations have taken steps to interact in order to help new entrants during their route to market, the

potential supplier has to contact each administrative body individually in order to establish what it has to do to enter the market.

Entry testing

- 8.4 Ofgem (then Offer) in conjunction with industry established a body (the Central Integration and Design Authority – CIDA) to oversee technical design and testing for the opening of competition in electricity supply in 1998. These tests were detailed and extensive, taking many months to complete. The magnitude of the task was understandable given that the systems being tested each supported large numbers of metering points.
- 8.5 The entry processes currently maintained by MRASCo, Elexon and SESL have their origins in these tests but have been refined significantly over time. They focus on the processes defined within the core agreements and are designed to take the new entrant through typical market scenarios. In the current regime, a potential supplier could reasonably expect to complete MRA testing for non half hourly (NHH²⁵) supply in around 7 to 9 weeks and half hourly (HH) testing in around 3 weeks. Elexon only maintains supplier tests for NHH supply and indicatively these could be completed in around 8 weeks.
- 8.6 MRASCo, Elexon and SESL maintain standing committees that consider issues relating to entry processes²⁶.

Electricity supply registration and settlement

- 8.7 The aim of testing is to reduce the risk to market participants of poor performance by a new entrant. When a customer signs a contract with an electricity supplier, that supplier must then register the metering point at the customer's premises in accordance with the rules defined in the MRA. A registration is deemed to be complete once the supplier is registered at a metering point, the accredited agents are appointed and all standing data (meter technical details and read histories) have been received. This can involve the

²⁵ The energy settlement process takes account of two different types of metering; half hourly (HH) meters which record demand for each half hour of each settlement day and non half hourly (NHH) meters which are read at greater intervals by meter reading personnel (for example, domestic electricity supply).

²⁶ MRA Entry Process Board (MEPB), BSC Performance Assurance Board (PAB), SAS Performance Assurance and Accreditation Panel (PAAP).

transfer of more than 30 dataflows. These processes are defined in the MRA, the BSC and their respective supporting documentation.

- 8.8 The Supplier Volume Allocation (otherwise known as “energy settlement”) process is the means by which suppliers are held accountable for the energy used by their customers and is defined within section S of the BSC. These rules require a supplier to submit an actual consumption value based on a valid meter read value for each non half hourly (NHH) meter to the Elexon central system at least once every 14 months²⁷. Electricity suppliers and their appointed agents, collectively referred to as the supplier hub, are responsible for the collection and processing of energy consumed at their registered metering points. This task includes the calculation of forward looking consumption estimates for each metering point, which are then used for energy settlement purposes in the absence of an actual meter reading. These estimated energy values are then reconciled back to actual consumption every time a meter read is taken. This process applies to all metering points (including domestic). The diversity of metering systems used within electricity supply (e.g. economy 7, seasonal time of day, maximum demand registers) lends further complexity to the processing of accurate consumption values, both estimated and actual.
- 8.9 The fragmented nature of the change of supplier or the change of agent process and the derivation of accurate energy values for each settlement day leaves potential for error, particularly for entrants with little or no experience of the operational market. Due to the nature of the current energy settlement rules, it is the suppliers registered to other NHH metering systems within the same GSP Group that share the risk of such errors.

Gas shipping / supply

Industry agreements

- 8.10 Gas shippers are obliged by their licence to sign and comply with the provisions of the Network Code of the relevant Gas Transporter (GT). The dominant GT is still Transco and its Network Code does not require new entrants to complete any business process testing.

²⁷ Supplier Volume Allocation Agent (SVAA)

- 8.11 Shippers are obliged to use hardware provided by Transco (IX gateways and routers) and it maintains a permanent testing environment (PTE) which new entrants are invited to use as part of their preparations. However Transco does not prescribe any mandatory testing nor undertake any assessment of the shipper's readiness to commence trading.

Testing during the licensing process

- 8.12 From the opening of the domestic gas market, Ofgem carried out a brief inspection of a domestic supplier's preparations prior to granting licences. Ofgem no longer carries out this check following an internal review of the process in February 2001, having concluded that the market arrangements were sufficiently robust that the inspections were no longer warranted.

Gas shipping registration, demand attribution and energy reconciliation

- 8.13 In order to complete the registration of a domestic gas site, a shipper may only be required to submit one Supply Point Administration (SPA) IX file to Transco systems and the whole process can be completed by the transfer of 4 IX files.
- 8.14 Transco operates the demand attribution and the energy reconciliation processes to ensure that shippers pay for the gas consumed at their registered metering points and to allow them to calculate transportation bills²⁸. Energy is initially attributed to shippers based on a forward looking estimated consumption value²⁹ but Transco administrates the recalculation of these values rather than the shippers. In addition, domestic gas sites are subject to the Reconciliation by Difference (RbD) process whereby the volumes of energy initially attributed to individual metering points on a daily basis are never reconciled to actual metered volumes within the central trading arrangements. Estimated consumption at industrial and commercial sites is reconciled back to actual consumption based on actual meter readings (as per the electricity settlement rules) but the metering systems involved tend not to be complex.

²⁸ The demand attribution process allocates energy consumption values on a daily basis to individual supply points.

²⁹ These estimated values are known as Annual Quantities (AQ).

Ofgem's view

- 8.15 Having considered the factors outlined above, it is clear that the gas and electricity supply governing bodies have taken different approaches to entry processing. Core industry agreements such as the Network Code, BSC and the MRA establish a baseline for supplier trading and failure to meet that baseline can disrupt the market. This can expose other market participants to commercial risk, sometimes with no clear route for recompense.
- 8.16 The potential for disruption appears greater in electricity supply than gas shipping. The relative complexity of the registration processes, the fragmented nature of supplier hub operations, and the more extensive and complex nature of energy volume derivation are all factors that contribute to this disparity. Entry testing is one of the measures employed by the electricity supply core industry bodies to manage a proportion of that risk. However, not all potential entrants pose the same risk to the market. A supplier wishing to trade a small number of large half hourly metered sites (where the hub predominantly handles actual consumption data and errors are relatively conspicuous) poses a smaller risk than one wishing to supply large numbers of non-half hourly metered sites (where energy is more likely to be settled on estimates and errors are more difficult to identify).
- 8.17 Having considered the factors outlined above Ofgem has established two main principles which it will apply when considering issues relating to electricity supply entry testing and accreditation. The first is that entry testing should reflect the risk that potential entrants pose to the trading arrangements and focus solely upon those processes that impact upon the integrity of those trading arrangements. Ofgem encourages the bodies responsible for the establishment and policing of entry testing to continue to be mindful of this principle. Ofgem notes the work undertaken by Elexon within the recent review of the Performance Assurance Framework³⁰ and the refinements made by the MRASCo Supplier Accreditation and Audit Team.

³⁰ BSC Performance Assurance Framework (PAF) consists of measures designed to facilitate and incentivise compliance on the part of BSC parties. It consists of various measures including supplier entry testing, agent accreditation, performance assurance reporting and monitoring, auditing and technical assurance. Elexon can be contacted (www.elexon.co.uk) for more details of the review of these measures.

8.18 The second principle is that organisations considering entry to the energy supply market should have access to a body of industry information (including a summary of the potential tasks that a supplier may be required to perform as part of its entry testing obligations) from a single point of contact. Understanding the complex nature of the electricity supply legal framework and its operational processes poses a significant challenge to anyone new to the industry. It is the view of Ofgem and other core industry bodies that the current fragmented nature of the route to market does little to help potential entrants to overcome this challenge. It would seem right and proper that any organisation considering entry to the energy supply market should have access to a body of industry information (including an account of potential entry testing obligations) from a single point of contact.

8.19 Ofgem has co-ordinated work with Elexon, SESL and MRASCo in this area. The main outputs from this work are:

- ◆ a checklist of industry contacts and appropriate contact details on the Ofgem website;
- ◆ the preparation of the Electricity Supplier Welcome Pack developed jointly by Ofgem, SESL, MRASCo and Elexon which provides a description of the supply trading arrangements, licensing procedures and entry testing. This will be available upon request from Ofgem in October 2002; and
- ◆ the opportunity for potential entrants to attend a presentation given jointly by the core industry bodies. It is intended that these presentations will give an overview of the supply trading arrangements, Ofgem's licensing procedures and supplier entry testing. These presentations will be arranged upon request and co-ordinated by Ofgem.

Views invited

8.20 Views are invited on any of the issues raised in this chapter. If you wish to discuss any of the issues raised in this chapter of the consultation document then please contact Catherine Monaghan (e mail: catherine.monaghan@ofgem.gov.uk, tel 020 7901 7176) in the first instance.

Appendix 1 The Application Regulations

1.1 This appendix contains copies of the current Application Regulations.

Appendix 2 Further information and documents to accompany an application

- 2.1 This appendix summarises the information which applicants are required to submit by Schedule 3 of the Application Regulations together with Ofgem's proposals for amendments.
- 2.2 Where it is proposed that existing requirements are omitted from the Application Regulations either a brief explanation is provided as to why the information is not required or the reader is referred to the relevant section of the document for an explanation.

Schedule 3 – Part I – Gas supplier licences

Section	Information required	Proposal
1.	<p>Applicant to</p> <ul style="list-style-type: none"> Confirm the form of licence requested i.e. to supply to specified areas, premises (domestic or non domestic) or throughout Great Britain. Provide a description, through maps if appropriate, of the area to which a supply is intended. 	Retain
2.	Is the gas to be supplied to be conveyed by a gas transporter or is an exemption relevant.	Retain
3.	<p>Information about the number of premises and maximum quantities of gas to be supplied.</p> <p><i>Ofgem considers that this information is an applicant's estimate of its future business and that it should not assess, during the licensing process, an applicant's business plans. This issue is discussed in paragraphs 5.7 and 5.8.</i></p>	Omit

Supply to domestic premises

Section	Information required	Proposal
4 a	<p>Particulars relating to bonds or other instruments or arrangements relating to standard condition 33 Last resort Supply: Security for Payments</p> <p><i>The level of bonds has been set to zero. Bonds are therefore no longer required.</i></p>	Omit
4b	<p>Proposed arrangements for acquiring gas to be supplied and ensuring continuity of supply.</p> <p><i>The ongoing requirement for suppliers to balance the flow of gas into and out of the network system removes the need for the supply of this information.</i></p>	Omit
4c	<p>Draft copy of schedule 2B to the Act – Deemed contracts for consumers.</p> <p><i>Ofgem does not approve or reject draft copies of deemed contracts. The requirement for this information therefore provides no protection for customers whilst imposing an administrative burden for applicants.</i></p>	Omit
4d	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions: 24 (Arrangements in Respect of Powers of Entry), 24A (Authorisation of Officers), 24B (Exercise of Powers of Entry), 25 (Efficient Use of Gas), 35 (Code of Practice on Payment of Bills and Guidance for Dealing with Customers in Difficulty), 36 (Code of Practice on the Use of Prepayment Meters), 37 (Provision of Services for Persons who are of Pensionable Age or Disabled or Chronically Sick), 37A (Pensioners Not to Have Supply of Gas Cut Off in Winter), 38 (Provision of Services for Persons who are Blind or Deaf), 39 (Complaint Handling Procedure) and 43 (Contractual Terms - Methods of Payment).</p>	Retain

4d	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions: 16 (Exchange of Information Between Licensee and Relevant Transporter and Shipper for Operation, Development or Maintenance of Pipe-line System and Detection and Prevention of Theft), 17 (Reading, Inspection and Testing of Meters), 26 (Record of and Report on Performance), 27 (Preparation, Review of and Compliance with Statements and Customer Service Codes), 34 (Metering Arrangements for Domestic Customers).</p> <p><i>The information which would be submitted about these standard conditions relates to behavioural obligations and arrangements. Submission of this information during the licensing process provides no benefit to Ofgem nor protection to customers (see paragraph 6.13 – 6.14).</i></p>	Omit
4e	<p>Details of the terms relating to directions under section 2(1)(b) of the Energy Act 1976(a) to be included in contracts for the supply of gas in accordance with paragraph 4 of standard condition 14 (security and emergency arrangements)</p> <p><i>Ofgem has no role in approving or rejecting this information during the licensing process. Provision of this information provides no protection for customers whilst imposing an administrative burden for applicants.</i></p>	Omit

Supply to non domestic premises

Section	Information required	Proposal
5a	<p>Proposed arrangements for acquiring gas to be supplied and ensuring continuity of supply.</p> <p><i>The ongoing requirement for suppliers to balance the flow of gas into and out of the network system removes the need for the submission of this information during the application process.</i></p>	Omit
5b	<p>details of the terms relating to pipe-line system emergencies and directions under section 2(1)(b) of the Energy Act 1976 which the applicant proposes to include in contracts for the supply of gas in accordance with paragraphs 3 and 4 of standard condition 14 (Security and Emergency Arrangements).</p> <p><i>Ofgem has no role in approving or rejecting this information during the licensing process. Provision of this information provides no protection for customers, whilst imposing an administrative burden for applicants.</i></p>	Omit
5c	<p>Draft copy of schedule 2B to the Act – Deemed contracts for consumers.</p> <p><i>Ofgem does not approve or reject draft copies of deemed contracts. The requirement for this information therefore provides no protection for customers whilst imposing an administrative burden for applicants.</i></p>	Omit

5d	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 16 (Exchange of Information Between Licensee and Relevant Transporter or Shipper for Operation, Development or Maintenance of Pipe-line System and Detection and Prevention of Theft), 17 (Reading, Inspection and Testing of Meters), 24 (Arrangements in Respect of Powers of Entry), 24A (Authorisation of Officers), 24B (Exercise of Powers of Entry), 25 (Efficient Use of Gas), 26 (Record of and Report on Performance), 27 (Preparation, Review of and Compliance with Statements and Customer Service Codes);</p> <p><i>The information which would be submitted about these standard conditions relates to behavioural obligations and arrangements and to social and environmental codes of practice.</i></p> <p><i>The information which would be submitted about behavioural obligations and arrangements during the licensing process provides no benefit to Ofgem nor protection to customers (see paragraph 6.13 – 6.14).</i></p> <p><i>Ofgem does not consider that non domestic customers need to have the same level of protection as domestic customers before a licence is granted (see paragraph 6.12).</i></p>	Omit
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Restriction of a gas supplier licence

Section	Information required	Proposal
6a	Estimates of numbers of premises and quantities of gas currently supplied and which would be supplied should the restriction be granted.	Amend
6b	Details of arrangements to ensure continuity of supply.	Amend

Schedule 3 – Part II – Gas shipper licences

Section	Information required	Proposal
1.	<p>Applicant to</p> <ul style="list-style-type: none"> • confirm the form of licence requested. • provide a description, through maps if appropriate, of the area or premises. 	Retain
2.	<p>Information about the number and type of premises and maximum quantities of gas to be shipped. Details of gas transporters with whom the applicant intends to ship gas.</p> <p><i>Ofgem considers that this information is an applicant's estimate of its future business and that it should not assess, during the licensing process, an applicant's business plans. This issue is discussed in paragraphs 5.7 and 5.8.</i></p> <p><i>Ofgem also has no role in approving business arrangements which may be subject to change.</i></p>	Omit
3	<p>Does the applicant intend to comply with the network code established by a transporter or comply with SLC 6 conveyance of gas otherwise than on Network code or similar terms.</p> <p><i>This requirement provides background information which confers no tangible benefit to Ofgem or customers. Ofgem has no role in approving this information (see 6.18 – 6.19).</i></p>	Omit
4	<p>A description of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 3 (General Obligations in Respect of Use of Relevant Transporter's Pipe-line System), 8 (Information as Respects Premises Served), 11 (Supply and Return of, and Information etc Relating to, Gas Meters),</p> <p><i>The information which would be submitted about these conditions relates to behavioural obligations and arrangements. Submission of this information during the licensing process provides no benefit to Ofgem nor protection to customers (see paragraph 6.13 – 6.14).</i></p> <p>16 (Arrangements in Respect of Powers of Entry), 16A (Authorisation of Officers), and 16B (Exercise of Powers of Entry).</p> <p><i>It is unlikely that shippers will need to enter customers property. While shippers must comply with all licence conditions Ofgem considers that there is no need to ensure compliance, through ex ante provision of information, before the grant of a licence (see paragraph 7.12)</i></p>	Omit

5.	<p>A description of the applicant' s proposed arrangements for compliance with the requirements of standard condition 5 (Obligations as Respects Emergencies etc) in relation to the handling of a pipe-line system emergency.</p> <p><i>The information which would be submitted about this condition relates to a behavioural obligation and arrangements. Submission of this information during the licensing process provides no benefit to Ofgem nor protection to customers (see paragraph 6.13 –6.14).</i></p>	Omit
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Schedule 3 – Part III – Gas transporter licences

Section	Information required	Proposal
1.	<p>Applicant to</p> <ul style="list-style-type: none"> • confirm the form of licence requested. • provide a description, through maps if appropriate, of the area or premises 	Retain
2.a-d	<p>Details of the persons for whom, the applicant intends to convey gas and arrangements which have been made. Number of premises and expected maximum quantity of gas to be conveyed.</p> <p><i>Ofgem considers that this information is an applicant's estimate of its future business and that it should not assess, during the licensing process, an applicant's business plans. This issue is discussed in paragraphs 5.7 and 5.8. Ofgem has no role in approving business arrangements which may be subject to change.</i></p>	Omit
2.e	<p>Detailed maps to show areas to be covered, configuration of the pipe-line system including pipes in excess of 7 bar gauge, pipes effecting connection to the system, points through which gas would be conveyed to the applicants pipe-line.</p> <p><i>This requirements provides background information. Ofgem has no role in approving background information during the licensing process (see paragraph 6.18- 6.19).</i></p>	Omit
3.	<p>Such particulars as will indicate whether any pipe-line system through which the applicant would be authorised to convey gas if the application were granted would be operated safely</p> <p><i>Ofgem's considers that gas safety issues are more appropriately dealt with by the HSE (see paragraphs 6.20 –6.23).</i></p>	Omit
4.	<p>Particulars of the applicant's proposed arrangements to secure–</p> <p>(a) the performance of any obligations in relation to escapes of gas imposed on him by Schedule 2B to the Act; and</p> <p>(b) the achievement of pipe-line system security standards in accordance with standard condition 16 (Pipe-Line System Security Standards).</p> <p><i>Ofgem considers that provision of ex ante provision of information provides no benefit for Ofgem or customers. Ofgem considers that ex post enforcement is appropriate for these requirements.</i></p>	Omit

5.	Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 8 (Provision and Return of Meters), 18 (Provision of Services for Persons who are of Blind or Deaf), 19 (Arrangements in Respect of Powers of Entry), 19A (Authorisation of Officers), 19B (Exercise of Powers of Entry) and 21 (Complaint Handling Procedure).	Retain
5.	4 (Charging of Gas Shippers—General), 4B (Connection Charges etc), 5 (System Development Obligations), 6 (Emergency Services and Enquiry Service Obligations), 7 (Provision of Information Relating to Gas Illegally Taken), 20 (Standards of Performance), 9 (Network Code). <i>The information which would be submitted about these standard conditions relates to behavioural obligations and arrangements. Submission of this information during the licensing process provides no benefit to Ofgem nor to customers (see paragraph 6.13 – 6.14).</i>	Omit

Restriction of a gas transporters licence

Section	Information required	Proposal
6.a	Estimates of numbers of premises and quantities of gas currently transported and which would be transported should the restriction be granted.	Amend
6.b	A description of the applicants proposed arrangements to ensure compliance with section10 of the Act, duty to ensure that consumers have a connection.	Amend

Schedule 3 – Part I – Electricity generation licences

Section	Information required	Proposal
1.	Provide a sufficient description adequately specifying the actual or proposed location of each generating station intended to be operated under the licence (if granted). Description of proposed location must be sufficient to make clear the nature and extent of the proposed development*	Retain
2.	Provide a statement of:	
a.	the number of generating stations to be operated;*	Omit
b.	a description of how each of those stations will, in each case, be fuelled or driven;*	Omit
c.	the date when any proposed generating stations are expected to be commissioned;*	Omit
d.	the maximum power (MW) for each of the next five years expected to be available from each generating station at any one time and the aggregate power (MW) expected to be available from each generating station during any year (Exclude (in each case) such wattage as is expected to be consumed at the station);*	Omit
e	the expected life of each generating station;*	Omit
f	for each generating station for each of the next five years, the numbers of generating units and the capacity of each generating unit;*	Omit
g	particulars of the person or persons to whom the applicant intends for each of the next five years to provide electricity and particulars of the distribution of that electricity, including details of the lines to be constructed;*	Omit
3.	A statement of the extent (if any) to which the applicant considers it necessary for powers under Schedule 3 (compulsory acquisition of land etc) and under Schedule 4 (other powers etc) to the Act to be given through the licence for which he is applying.	Retain

** These requirements provide background information about an applicant's proposed arrangements and business. Ofgem has no role in approving background information during the licensing process (see paragraph 6.18 - 6.19).*

Schedule 3 – Part II – Electricity transmission licences

Section	Information required	Proposal
1.	Provide a sufficient description adequately specifying the actual or proposed locations of the electric lines and electrical plant constituting the intended transmission system, and the area to which the application relates;*	Retain
2.	An indication of the extent to which, and the locations in which, those lines are or will be placed underground.*	Omit
3.	An identification of the voltages of the electrical lines forming part of the intended transmission system*	Omit
4.a	particulars of the person or persons from whom, and the points at which, the applicant expects for each of the next five years to receive the electricity which he will transmit; particulars of the transmission of the electricity; particulars of the expected off-take points; and quantities, *	Omit
4.b	interconnections to other transmission systems, *	Omit
4.c	proposed metering arrangements*	Omit
4.d	schedule of generating plant owned by the applicant including pumped storage, clutched gas turbine generators and synchronous compensators;*	Omit
4.e	forecast annual maximum demands for each of the next five years in his transmission system (GW) and energy (GWh) to be transmitted, *	Omit
4.f	summary large scale map, together with detailed maps providing information on areas where activities are concentrated as necessary*	Omit
4.g	a single line diagram of the transmission system should be provided. All transmission voltage levels (400 and 275 kV in England and Wales and 400, 275 and 132 kV in Scotland) should be shown on the diagram;*	Omit
5	A description of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions C7 (Charges for Use of System) C7B Connection Charging Methodology) and C7D (Requirement to Offer Terms). <i>Ofgem has no role in approving this information during the licensing process. Greater discussion of these issues is presented in paragraphs 6.24 – 6.26.</i>	Omit
6.	A description of the applicant's proposed arrangements for compliance with the continuity of supply requirements in regulations made under section 29 of the Act. <i>Ofgem has no role in approving this information during the licensing process.</i>	Omit

* These requirements provide background information about an applicant's proposed arrangements and business. Ofgem has no role in approving background information during the licensing process (see paragraph 6.18 – 6.19).

Schedule 3 – Part III – Electricity distribution licences

Section	Information required	Proposal
1.	Provide a sufficient description adequately specifying the actual or proposed location of the system of electric lines and electrical plant by means of which the applicant intends to enable a supply of electricity to be given, indicating which plant and lines are to be constructed and which are existing plant and lines, and further identifying any parts of that system which will not be owned by or otherwise in the possession or control of the applicant, and the area to which the application relates.*	Retain
2.	A statement of the extent (if any) to which the applicant considers it necessary for powers under Schedule 3 (compulsory acquisition of land etc.) and under Schedule 4 (other powers etc.) to the Act to be given through the licence for which he is applying.	Retain
3.a	particulars of the person or persons from whom the applicant intends for each of the next five years to receive the electricity which he will distribute, particulars of the arrangements made for distribution of electricity; particulars of the expected off-take points; and quantities.*	Omit
3.b	forecast annual maximum demand for each of the next five years in his distribution system (MW) and energy (GWh) to be distributed*	Omit
3.c	details of the voltage levels and types (AC or DC), and frequency of operation. Include details of expected circuit length per voltage level for each of the next five years;*	Omit
3.d	details of estimated connections per voltage level*	Omit
3.e	details of any existing or proposed embedded generating station, including location, type, the maximum power (MW) for each of the next five years expected to be available from each generating station at any one time, and the aggregate power (MW) for each of the next five years expected to be available from each generating station during any year. Exclude (in each case) such wattage as is expected to be consumed on site*	Omit
3.f	detailed map or maps, to scale sufficient to show clearly the area to which the application relates. This should include the distribution system above 11kV, location of in-feeds (Grid Supply Points), overhead lines, interconnectors, cable routes and associated substations. Showing which lines, cables and substations are to be constructed and which are already in existence*	Omit

* *These requirements provide background information about an applicant's proposed arrangements and business. Ofgem has no role in approving background information during the licensing process (see paragraph 6.18 - 6.19).*

Electricity distribution licences - continued

Section	Information required	Proposal
4.	<p>A map drawn to an appropriate scale showing the actual or proposed configuration of the distribution system the applicant would operate if the application were granted, showing–</p> <p>(i) all electric lines and electrical plant effecting connection to the system operated by any other authorised distributor; and</p> <p>(iii) all points through which it is proposed that electricity would be conveyed to the applicant's distribution system.*</p>	Omit
5.	<p>Such particulars as will indicate whether any distribution system through which the applicant would be authorised to convey electricity if the application were granted would be operated safely.</p> <p><i>Ofgem's considers that safety issues are more appropriately dealt with by the DTI Engineering Inspectorate (see paragraphs 6.20 –6.23).</i></p>	Omit
6.	<p>Particulars of the applicant's proposed arrangements to secure the performance of any obligations in relation to supplies of electricity illegally taken imposed on him by paragraph 4 of Schedule 6 to the Act* .</p>	Omit
7.	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard 6 (Safety and Security of Supplies Enquiry Service), 8 (Provisions Relating to the Connection of Metering Equipment), 19 (Code of Practice on Procedures with Respect to Site Access).</p>	Retain
7.	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 17. Provision of Services for Persons who are of Pensionable Age, Disabled or Chronically sick; 18 Provision of Services for Persons who are Blind or Deaf; and 21 Complaint handling Procedure.</p>	Insert
7.	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions, 5 (Distribution System Planning Standard and Quality of Service), 7 (Provision of Information about Theft or Abstraction of Electricity, Damage and Meter Interference, conditions 4 (Basis of Charges for Use of System and Connection to System: Requirements for Transparency),), 4B (Requirement to Offer Terms for Use of System and Connection), and 9 (Distribution Code).</p> <p><i>The information which would be submitted about these standard conditions relates to behavioural obligations and arrangements. Ofgem considers that it is more appropriate to deal with any issues that arise through ex post enforcement (see paragraph 6.13 – 6.14).</i></p>	Omit

* These requirements provide background information about an applicant's proposed arrangements and business. Ofgem has no role in approving background information during the licensing process (see paragraph 6.18 – 6.19).

8.	A description of the applicant's proposed arrangements for compliance with the continuity of supply requirements in regulations made under section 29 of the Act.*	Omit
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** These requirements provide background information about an applicant's proposed arrangements and business. Ofgem has no role in approving background information during the licensing process (see paragraph 6.18 – 6.19).*

Restriction of an electricity distribution licence

Section	Information required	Proposal
9.a	Estimates of numbers of premises and quantities of electricity currently distributed and which would be distributed should the restriction be granted.	Amend
9.b &c	A description of the applicants proposed arrangements to ensure compliance with section 16 of the Act, duty to ensure that consumers have a connection.	Amend

Schedule 3 – Part IV – Electricity Supplier

Section	Information required	Proposal
1.	<p>Applicant to</p> <ul style="list-style-type: none"> confirm the form of licence requested i.e. to supply to specified areas, premises (domestic or non domestic) or throughout Great Britain. provide a description, through maps if appropriate, of the area to which a supply is intended. 	Retain
2.	<p>For all applications for supply licences, or extensions of such licences, state whether the licence or extension is to authorise the supply of electricity to premises to which it is conveyed by a distributor, and if not give details of any exemption under section 5 of the Act under which the electricity is or will be conveyed to the premises.</p> <p><i>Ofgem has no role in approving or rejecting information provided about this requirement during the licensing process. Provision of this information therefore provides no protection for consumers whilst imposing an administrative burden for applicants.</i></p>	Omit
3.	<p>Information about the number of premises and maximum quantities of electricity to be supplied.</p> <p><i>Ofgem considers that this information is an applicant's estimate of its future business and that it should not assess, during the licensing process, an applicant's business plans. This issue is discussed in paragraphs 5.7 and 5.8.</i></p>	Omit

Supply to domestic premises

Section	Information required	Proposal
4.a	<p>Particulars, where appropriate, of the bond, other instrument or arrangements proposed to be taken out or made by the applicant in accordance with standard condition 33 (Last Resort Supply: Security for Payments);</p> <p><i>The level of bonds has been set to zero. Bonds are, therefore, no longer required.</i></p>	Omit
4.b	<p>A draft copy of the scheme proposed to be made by the applicant under paragraph 3 of Schedule 6 to the Act (Deemed contracts in certain cases);</p> <p><i>Ofgem does not accept or reject draft copies of deemed contracts. The requirement for this information to be provided, therefore, provides no protection for customers whilst imposing an administrative burden for applicants.</i></p>	Omit

4.c	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 16 (Procedures for the Detection and Prevention of Theft or Abstraction of Electricity, Damage and Meter Interference), 17 (Reading and Inspection of Meters), 26 (Record of and Report on Performance), 27 (Preparation, Review of and Compliance with Customer Service Codes), 32 (Duty to Supply Domestic Customers),</p> <p><i>The information which would be submitted about these licence conditions relates to behavioural obligations and arrangements. Submission of this information during the licensing process provides no benefit to Ofgem nor protection to customers (see paragraph 6.13 – 6.14).</i></p>	Omit
4.c	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 7 (Duty to Offer Terms for Meter Provision), 24 (Code of Practice on Procedures with Respect to Site Access), 25 (Efficient Use of Electricity), 35 (Code of Practice on Payment of Bills and Guidance for Dealing with Customers in Difficulty), 37 (Provision of Services for Persons who are of Pensionable Age or Disabled or Chronically Sick), 38 (Provision of Services for Persons who are Blind or Deaf) and 43 (Contractual Terms - Methods of Payment);</p>	Retain
4.d	<p>A description of the applicant's proposed arrangements for compliance with the continuity of supply requirements in regulations made under section 29 of the Act.</p> <p><i>Ofgem has no role in approving the applicants proposals during the licensing process. Ofgem considers that it is more appropriate to deal with any issues which may arise through ex post enforcement.</i></p>	Omit

Supply to non domestic premises

Section	Information required	Proposal
5.a	<p>A draft copy of the scheme proposed to be made by the applicant under paragraph 3 of Schedule 6 to the Act (Deemed contracts in certain cases);</p> <p><i>Ofgem does not accept or reject draft copies of deemed contracts. The requirement for this information to be provided, therefore, provides no protection for customers whilst imposing an administrative burden for applicants</i></p>	Omit

5.b	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard condition 16 (Procedures for the Detection and Prevention of Theft or Abstraction of Electricity, Damage and Meter Interference);</p> <p><i>The information which would be submitted about these licence conditions relates to behavioural obligations and arrangements. Submission of this information during the licensing process provides no benefit to Ofgem nor protection to customers (see paragraph 6.13 – 6.14).</i></p>	Omit
	<p>Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard condition 7 (Duty to Offer Terms for Meter Provision).</p>	Retain
5.c	<p>A description of the applicant's proposed arrangements for compliance with the continuity of supply requirements in regulations made under section 29 of the Act.</p> <p><i>Ofgem has no role in approving the applicants proposals during the licensing process. Ofgem considers that it is more appropriate to deal with any issues which may arise through ex post enforcement.</i></p>	Omit

Restriction of an electricity supply licence

Section	Information required	Proposal
6.a	Estimates of numbers of premises and quantities of electricity currently supplied and which would be supplied should the restriction be granted.	Amend
6.b & c	A description of the applicants proposed arrangements under SLC 22A for ensuring continuity of supply.	Amend

Appendix 3 Application fees

3.1 This appendix presents the fees currently charged for gas and electricity applications.

Table 1. Fees payable for Electricity Licences

<i>Description of application</i>	<i>Fee payable, £</i>
Generation	
Application for licence	800
Transmission	
Application for licence	2,000
Distribution	
1. Application for licence to distribute electricity within a specified area	2,000
2. Application for an extension or restriction	600
Supply	
1. Application for licence (not including authorisation to supply electricity to domestic premises)	800
2. Application for licence including authorisation to supply electricity to domestic premises	1,500
3. Application for extension of a licence which includes authorisation to supply electricity to domestic premises	600
4. Application for any other extension or restriction	600

Table 2. Fees payable for Gas Licences

<i>Description of application</i>	<i>Fee payable, £</i>
<i>Gas Supplier</i>	
1. Application for licence or extension (not including authorisation to supply gas to domestic premises)	800
2. Application for licence or extension including authorisation to supply gas to domestic premises to which gas is, or is to be, conveyed otherwise than by a gas transporter	800
3. Application for licence including authorisation to supply gas to domestic premises to which gas is, or is to be, conveyed by a gas transporter	1,500
4. Application for extension of a licence which does not include authorisation to supply gas to domestic premises to which gas is conveyed by a gas transporter so as to include such authorisation	600
5. Application for any other extension or restriction	600
<i>Gas shipper</i>	
Any application	800
<i>Gas transporter</i>	
1. Application for licence with specified area	2,000
2. Application for licence to convey gas only to any pipe-line system operated by another gas transporter	3,000
3. Application for any other extension or restriction	600