

Consideration of responses to the consultation document “Review of the Licensing Application Regulations”

**Ofgem update document
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In September 2002 Ofgem published a consultation paper “Review of the Licensing Application Regulations¹”. The paper explained the outcome of a review that had considered whether the requirements of the Application Regulations were appropriate. Where the review identified regulatory barriers to entry that could no longer be justified, it proposed changes that would significantly decrease the burden on applicants for licences without reducing the protection given to other market participants and customers.

Ofgem received 11 responses to the consultation; these are on Ofgem’s website². This note discusses the issues raised in the responses and explains Ofgem’s response to them.

On 13 March 2003 the Gas and Electricity Markets Authority made The Gas (Applications for Licences and Extensions and Restrictions of Licences (Amendment) Regulations 2003 and The Electricity (Applications for Licences and Extensions and Restrictions of Licences (Amendment) Regulations 2003. These come into force on 11 April 2003. Ofgem will review its guidance to licence applicants and re-issue it soon.

Ofgem believes that the changes simplify the process of getting a licence, reducing unnecessary cost and delay. However they have no impact on the protection licences provide to other market participants and customers.

Copies of the new regulations are available on the HMSO website. They should be read in conjunction with the existing regulations³.

1. Financial information

Some respondents expressed disagreement with Ofgem's proposal to remove the need for applicants to submit financial information, stating that there is a need for Ofgem to assess accounts and business plans. Respondents linked the submission of financial information with supplier failure and Ofgem’s final proposals on credit cover. In particular respondents considered that there is a need to establish comprehensive credit cover arrangements, Supplier of Last Resort and distributor of last resort processes together with rules for the recovery of stranded assets. One respondent drew a distinction between assessing financial information for applicants for network licences compared to the information from potential suppliers and shippers.

Ofgem’s response

Ofgem has carefully considered the need for applicants to submit financial information when making a licence application. Ofgem has already stated that no check that it could perform at the time of application will provide continuing comfort about financial

¹ Ofgem September 2002 (62/02)

² <http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=licensing&levelids>

³ The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2001 SI 3353 and the Electricity (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2001 SI 3354.

viability. Where they exist, entry testing arrangements provide a greater level of protection than any test that Ofgem could perform before it granted a licence.

Ofgem believes that the principles outlined in its recent proposals on credit cover⁴ (together with a best practice framework to be developed by an industry working group) will provide improved risk management across both industries.

Ofgem recognises the concerns that exist about the potential for network operators (in particular new distributors and independent gas transporters) to fail. However these companies will need to be well-financed in order to get into business and to comply with the ring-fencing conditions in the licence. Pre-licensing checks therefore provide no additional protection for customers.

The Energy White Paper includes a proposal for DTI to undertake a public consultation on the need for an insolvency administration regime for gas and electricity networks, including the scope of any provision, its potential effectiveness and other details.

2. Disqualification of directors

Respondents generally agreed with Ofgem's proposal to continue to check that directors are not disqualified or un-discharged bankrupts.

Ofgem's response

Ofgem has carefully considered the need to request this information and the potential impact of requesting it. Ofgem believes that in pursuit of its principal objective to protect the interests of consumers it is necessary to take reasonable steps to ensure the probity of those to whom it may grant a licence. If an applicant turns out to have a disqualified director acting illegally, we will inform the relevant authorities.

3. Criminal convictions

One respondent expressed concern about the proposal to require applicants to submit a declaration about unspent criminal convictions. The respondent said that Ofgem should demonstrate that its statutory duty extends to requesting this information.

Ofgem's response

Ofgem considers that, given the importance of the licensing function (for example, some licensees have statutory rights of entry) it should request this information. We will publish objective and non-discriminatory criteria explaining how the information will be considered.

4. Expertise of applicant

Some applicants said that Ofgem should continue to ask for evidence of an applicant's expertise.

Ofgem's response

⁴ Arrangements for gas and electricity network operator credit cover. Conclusions and proposals. February 2003 06/03

Ofgem believes that there is no justification to continue to require applicants to demonstrate expertise. Entry testing arrangements and other mechanisms have operated successfully, protecting the market, customers and other participants since market inception. Ofgem ensures that entry testing arrangements remain appropriate without placing undue burden on those seeking to participate in the market. Suggestions for the amendment of entry testing processes are carefully considered by Ofgem as part of its ongoing work. Ofgem has no powers to ensure that any expertise remains once a licensee starts operations and therefore the value of checking any information during application is limited.

5. Safety

One respondent commented that there was a need to keep safety role for gas distribution networks.

Ofgem's response

Ofgem works closely with the HSE to ensure that gas distribution networks are operated safely. However, Ofgem does not believe that it should seek to duplicate the role of the HSE in ensuring that particular gas pipelines are operated safely. Operators of gas pipelines are required to submit safety cases to the HSE for approval.

6. Fees

Some respondents commented that there was a need to ensure that revised application fees reflect Ofgem's costs.

Ofgem's response

The new fees have been individually calculated to account for staff time and overheads. In all but two cases the cost of processing an application has fallen under the Application Regulations. In some cases the reductions have been considerable. The cost of making an application for a gas transporter licence has fallen by two thirds while an application for a gas or electricity supply licence has fallen by nearly one quarter. However, the cost of making an application for an extension of a gas or electricity supply licence where the extension is for the authorisation to supply domestic premises has risen by £200 and £400 respectively. This reflects the time necessary to assess domestic social and environmental codes of practice.

7. Publishing notices of application

Respondents agreed with the proposal to publish notices on the internet rather than in the London and Edinburgh gazettes. The extension of the time within which applicants have to publish a notice will be extended from 7 to 10 working days was welcomed, but some respondents questioned whether it would be sufficient.

Ofgem's response

Ofgem's decision to increase the time within which applicants are required to publish notices was made after taking into consideration responses to the previous consultation on the Application Regulations. Ofgem sees no reason why an applicant would not be

able to publish the notice within 10 *working* days, even over periods when there are several bank holidays. To help applicants, Ofgem already provides templates for all notices.

8. Distribution licences

One respondent expressed concern about the benefits to customers of granting independent electricity distribution licences. Another respondent said that Ofgem should assess the impact on competition of granting such a licence particularly if the licensee's affiliates had interests in generation or supply.

Ofgem's response

On the 31 May 2002 Ofgem published an open letter requesting views on the regulation of any new electricity distribution licence holders. The letter dealt with matters relating to charging, quality of service, financial ring-fencing and regulatory accounts for any new electricity distribution licence holders. It made proposals for interim arrangements to ensure that the interests of consumers are properly protected and said these could remain in place until a wider ranging review of these matters can be completed. Ofgem intends to publish a consultation paper on the wider review later in 2003.

9. Existing licensees

One applicant said that Ofgem should request less information from those companies that already hold a licence than from "new" applicants.

Ofgem's response

Ofgem does not consider that the fact that a company already holds a licence means that they would perform better than a company that does not. The overall reduction in the amount of information required by the new Application Regulations will reduce the barrier to entry to all those wishing to participate in the gas and electricity sector.