

**Proposals for the amendment of the
Licensing Application Regulations**

Consultation Document

June 2004

Summary

This document sets out the changes to the Gas and Electricity Application Regulations that Ofgem proposes to make following the commencement of the Energy Bill. It explains the changes that are proposed to the Application Regulations for the introduction of the British Electricity Trading and Transmission Arrangements (BETTA) and for the licensing of gas and electricity interconnectors.

Ofgem proposes to bring about these changes by repealing the existing Application Regulations and replacing them with new Application Regulations.

The possible requirement for further future changes to the Electricity Application Regulations for the offshore energy production regime which will be introduced by the Energy Bill is also highlighted. However, this consultation does not contain draft amendments in relation to offshore matters, which will be the subject of further proposed amendments in due course.

The document also proposes changes which seek to ensure that the licensing process and the Application Regulations are as comprehensible, clear and user friendly as possible. In doing so it seeks to respond to issues raised in the past by applicants and to clarify the requirements of the Application Regulations.

PLEASE NOTE

The version of the Energy Bill referred to in this document is that printed on 22 April 2004, as amended by the House of Lords.

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1. Introduction

Purpose of this document

- 1.1. This document sets out the changes to the Gas and Electricity Application Regulations 2001 (“the Application Regulations”)¹ and the amendment Application Regulations 2003 (“the Amendment Regulations”)² (together “the Amended Regulations”) that the Office of Gas and Electricity Markets (Ofgem) proposes to make following the commencement of the Energy Bill³. The Energy Bill is currently undergoing passage through Parliament and this consultation document is based on the expectation that the Energy Bill will receive Royal Assent in July 2004.
- 1.2. This document also proposes changes which seek to ensure that the licensing process and its Regulations are as comprehensible, clear and user friendly as possible. In doing so it seeks to respond to issues raised in the past by applicants, when making applications, and to clarify the requirements of the Amended Regulations. The proposed changes will be brought about by repealing the Amended Regulations and replacing them with new Application Regulations in September or October 2004.
- 1.3. This document represents a continuation of the review of the application process which began in March 2002⁴. It reinforces Ofgem’s commitment to minimising the regulatory burden associated with applying for a licence, an extension or restriction of a licence and maximising opportunities for new firms to enter competitive markets.

¹ 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.

² The Gas (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003 SI 847 and The Electricity (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003 SI 848.

³ Ofgem is the Office of Gas and Electricity Markets. Ofgem operates under the directions and governance of the Gas and Electricity Markets Authority. Its powers are provided for under the Gas Act 1986 (“the Gas Act”), the Electricity Act 1989 (“the Electricity Act”) (together “the Acts”) and the Utilities Act 2000 (“the Utilities Act”).

⁴ Gas and electricity licence applications. Guidance document. March 2002. Ofgem 27/02.

Context

The Energy Bill

1.4. The Energy Bill⁵ contains provisions which, on commencement, will extend the prohibitions on licensable activities contained within the Gas Act 1986 (“the Gas Act”)⁶ and the Electricity Act 1989 (“the Electricity Act”)⁷ (together “the Gas and Electricity Acts”) so as to include:

- ◆ participation in the operation of a gas or electricity interconnector⁸, and
- ◆ the carrying out of activities prohibited by the Electricity Act in Great Britain, the territorial Sea adjacent to Great Britain or any designated Renewable Energy Zones (“REZ”).

1.5. The Energy Bill also contains provisions relating to the introduction of the British Electricity Trading and Transmission Arrangements (“BETTA”). Ofgem and the Department of Trade and Industry (“DTI”) have published a series of consultation and conclusions papers during the development of BETTA, which is planned for introduction in April 2005 (subject to the Energy Bill receiving Royal Assent in July 2004). These consultations can be viewed on the Ofgem website at www.ofgem.gov.uk. These provisions include:

- ◆ the introduction of a new licensable activity of “participation in transmission” which incorporates both system operation and transmission ownership activities in place of the current prohibition on “transmitting” without a licence
- ◆ the removal of the current concept of “authorised area” which currently prevents more than one transmission licensee undertaking transmission activities in a given geographic area, and

⁵ The version of the Energy Bill referred to in this document is that printed on 22 April 2004, as amended by the House of Lords. The Government expects that the Energy Bill shall receive Royal Assent prior to the summer recess.

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

⁷ Electricity Act 1989 (as amended by the Utilities Act 2000)

⁸ Energy Bill clause 117 and clause 121. Gas Act 1986 s5(1) and Electricity Act 1989 s4(1) (as amended by the Utilities Act 2000).

- ◆ the introduction of a new set of standard licence conditions (“SLC”) for electricity transmission licensees and the introduction of a new regulated code (the system operator-transmission owner (“STC”)) which sets out interactions between the transmission licensees relating to the GB transmission system.
- 1.6. Commencement of the above provisions contained within the Energy Bill will require changes to the Amended Regulations which are a core component of the gas and electricity licensing system.
- 1.7. The Energy Bill may be amended at any point before it receives Royal Assent. It is therefore possible that amendments may be tabled after the publication of this consultation document that require Ofgem to make further changes to the form of the new Application Regulations, drafts of which are set out in Appendix 1. To the extent that such further changes are required these will need to be consulted upon in due course.

The Application Regulations

- 1.8. The Amended 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 application. In addition they specify the information that applicants must provide in order for Ofgem to consider an application.

Structure of this document

- 1.9. The remainder of this document is structured in the following way:
- ◆ Chapter 2 sets out the timetable for the consultation and for responses
 - ◆ Chapter 3 explains the regulatory and legal framework relevant to the licensing process. It also explains the new prohibitions that will be introduced into the Gas and Electricity Acts by the Energy Bill
 - ◆ Chapter 4 sets out Ofgem’s proposals for introducing new Application Regulations which will repeal and replace the existing Amended Regulations. It describes the reasons why Ofgem is proposing to change

the Amended Regulations and the impacts of the proposed changes and where appropriate sets out options for change, and

- ◆ Appendix 1 presents copies of the draft new Application Regulations for comment.

Summary Impact Assessment

- 1.10. A full Regulatory Impact Assessment for the Energy Bill has been undertaken and is available on the DTI website www.dti.gov.uk.
- 1.11. In Ofgem's view the changes described in this document impose the minimum necessary burden on industry. Where proposals do decrease the burden on applicants they do so without reducing the protection given to the market, other participants and customers.

2. Timetable and responses

- 2.1. This consultation document contains proposals to introduce new Application Regulations.
- 2.2. The proposed timetable for what happens next is:
- ◆ replies to the consultation should be sent by 20 July 2004
 - ◆ Ofgem will consider responses during July and August
 - ◆ The Gas and Electricity Markets Authority (“the Authority”) will be invited to make new Application Regulations in August or September 2004, and
 - ◆ the new Application Regulations will be implemented in September or October 2004.

Views invited

- 2.3. Comments are invited on the proposals set out in this document. Ofgem will consider any comments made and, where necessary, revise its approach. The DTI will also shortly be consulting on its proposals for gas and electricity interconnectors. Therefore, should Ofgem consider that responses to either this consultation or DTI’s consultation raise significant questions about the proposals for the licensing of interconnectors, it may choose to delay implementing changes for interconnectors until it has consulted further. In these circumstances Ofgem will seek to introduce the other changes proposed to the Application Regulations in the timeframe set out above and will include the changes necessary for interconnectors through subsequent amendments to the new Application Regulations in the autumn.

Comments should be sent to:

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The closing date for responses is 20 July 2004.

Contact

- 2.4. If you wish to discuss this consultation paper, please contact Michael Fews on the contact details above.

Confidentiality

- 2.5. All responses will normally be published on the Ofgem website and held electronically in the Ofgem Research and Information Centre unless there are good reasons why they must remain confidential. Consultees should try to put any confidential material in appendices in their responses. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.

3. Background

- 3.1. This chapter explains the regulatory and legal framework relevant to the licensing process. It also explains the new prohibitions that the Energy Bill introduces into the Gas and Electricity Acts.

Regulatory Framework

The Gas Act

- 3.2. The Gas Act makes it an offence to carry out certain activities unless licensed or exempt from the requirement for a licence⁹. The Authority can grant licences¹⁰ for the following activities:

- ◆ gas transportation
- ◆ gas shipping, and
- ◆ gas supply.

The Electricity Act

- 3.3. The Electricity Act makes it an offence to carry out certain activities unless licensed or exempt from the requirement for a licence¹¹. The Authority can grant¹² licences for the following activities:

- ◆ electricity generation
- ◆ electricity transmission¹³
- ◆ electricity distribution, and
- ◆ electricity supply.

⁹ Gas Act 1986 s5 (as amended by the Utilities Act 2000)

¹⁰ Gas Act 1986 s7 & s7A (as amended by the Utilities Act 2000)

¹¹ Electricity Act 1989 s4 (as amended by the Utilities Act 2000)

¹² Electricity Act 1989 s6 (as amended by the Utilities Act 2000)

¹³ Under BETTA the existing prohibition on 'transmitting' without a licence will be replaced with a new prohibition on 'participating in the transmission of electricity' without a licence.

The Application Regulations

- 3.4. 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 licence¹⁴.
- 3.5. Ofgem began a review of the licensing process in March 2002 with the publication of guidance for applicants¹⁵. The review of the licensing process sought to assess whether the precautionary approach embodied in the Application Regulations remained appropriate.
- 3.6. As a result of the review, in September 2002, Ofgem proposed a number of changes to the Application Regulations¹⁶. It noted that the liberalised gas and electricity markets had proved robust to the failure of participants, that industry systems had been created to ensure the stability of new entrants, that Ofgem had acquired considerable experience, and had learned that information gathered at the application stage is of little value for licence enforcement.
- 3.7. The Amended Regulations state the manner and form in which applications for gas and electricity licences must be made and the information that applications must contain. They apply to applications for a licence, applications for an extension of a licence and applications for a restriction of a licence.
- 3.8. In addition to specific information that is required for the different types of licence, all applicants must provide the following information:
- ◆ “General Particulars” - such as name and address of the applicant
 - ◆ “Details of Application” - where an applicant can explain any modifications to Standard Licence Conditions that they require, and
 - ◆ “Criminal Offences” - details of criminal convictions of the applicant or any of those persons specified in the Amendment Regulations.

¹⁴ Gas Act 1986 s7B and Electricity Act 1989 s6A(2) (as amended by the Utilities Act 2000).

¹⁵ Gas and electricity licence applications. Guidance document. March 2002. Ofgem 27/02.

The Energy Bill

3.9. The Energy Bill, which is anticipated to gain Royal Assent in July 2004, covers four main areas:

- ◆ UK energy strategy: security and integrity of supply
- ◆ the civil nuclear industry
- ◆ renewable energy sources, and
- ◆ energy markets and regulation.

3.10. The Energy Bill will implement commitments made in Government White Papers and sets out plans for the funding and decommissioning of the public sector civil nuclear legacy. As explained in chapter 1 of this paper the Energy Bill also contains provisions relating to the introduction of BETTA which includes changes to existing licensing arrangements for electricity transmission. In addition, it implements a number of requirements in the European Union's ("EU") Gas and Electricity Directives and its Electricity Regulation.

Interconnectors

3.11. Interconnectors link electricity and gas systems, and where such interconnectors exist between Member States they play a key role in the development of a single EU market for gas and electricity. They facilitate trade between Member States and, by allowing arbitrage of different energy prices, they contribute to the efficient pricing and sourcing of energy. There are five gas interconnectors to/from GB and three electricity interconnectors to/from GB^{17,18}.

¹⁶ Review of the Licensing Application Regulations. Consultation Document. September 2002. Ofgem 62/02.

¹⁷ The United Kingdom of Great Britain and Northern Ireland is a Member State of the European Union. Within the context of the Energy Bill, Northern Ireland is a territory of GB and the Energy Bill requires the licensing regime for interconnectors between GB and GB territories.

¹⁸ Under Article 2(2) of the Directive, the Ormen Lange and Vesterled pipelines would each be defined as an "upstream pipeline network". As such, the applicable access arrangements are set out in Article 20 - "Access to upstream pipeline networks".

- 3.12. The new EU Gas¹⁹ and Electricity²⁰ Directives and Electricity Regulation²¹ include provisions that apply directly to the regulation of gas and electricity interconnectors. The EU legislation requires a system of regulated third party access to be implemented for interconnectors. It also allows national regulatory authorities to exempt major new interconnectors, and significant increases in capacity in existing interconnectors, from these requirements where certain criteria are met. Any decision to exempt must be notified to the European Commission, which retains a veto over the decision to grant an exemption.
- 3.13. These requirements for regulated third party access are being implemented in GB law via the Energy Bill. The Energy Bill introduces a licensing regime for gas and electricity interconnectors, through which it is intended that the requirements concerning third party access and, where appropriate, exemptions from these requirements, will be given effect.
- 3.14. The DTI and Ofgem have previously conducted joint consultations on the proposed regulatory regime for gas and electricity interconnectors in Great Britain²². The DTI has also conducted consultations on the GB implementation of the EU Gas and Electricity Directives and Electricity Regulation²³.
- 3.15. The DTI intends to begin a consultation on the determination of standard licence conditions and licences to be granted to existing interconnector operators in July 2004.
- 3.16. The Energy Bill will introduce new prohibitions for interconnectors into the Gas and Electricity Acts. The Gas and Electricity Acts will then prohibit the activity of participation in the operation of a gas²⁴ or electricity²⁵ interconnector unless

¹⁹ Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

²⁰ Directive 2003/54/EC of the European Parliament and of the Council concerning the common rules for the internal market in electricity and repealing Directive 96/92/EC.

²¹ Regulation No. 1228/2003 of the European Parliament and of the Council on Conditions for Access to the Network for Cross-Border Exchanges in Electricity.

²² LNG facilities and interconnectors: EU legislation and regulatory regime: DTI/Ofgem initial views: June 2003; LNG facilities and interconnectors: EU legislation and regulatory regime: DTI/Ofgem final views: November 2003.

²³ Department of Trade and Industry, Implementation of EU Directive 2003/55 Concerning Common Rules for the Internal Market in Gas, February 2004; Department of Trade and Industry, Implementation of EU Directive 2003/54 Concerning Common Rules for the Internal Market in Electricity, February 2004.

²⁴ Energy Bill 2004 clause 146.

²⁵ Energy Bill 2004 clause 142(2)

licensed or exempted from the requirement to be licensed. Subject to the outcome of its consultation, the DTI currently intends that those interconnectors wishing to be exempt from EU legislation will be required to be licensed, but will have the relevant conditions “switched off” in their licence.

Offshore wind generation, transmission and distribution

- 3.17. The Government thinks offshore wind generation can contribute to the UK’s targets for levels of electricity supply from renewable sources to rise to 10 per cent by 2010.
- 3.18. The Energy Bill will extend the prohibitions on licensable activities set out in the Electricity Act 1989 so as to apply in Great Britain, the territorial sea adjacent to Great Britain and any designated REZ. In doing so, the licensing and exemption framework will also be extended offshore.
- 3.19. The Energy Bill will also provide the Authority with the flexibility to grant offshore transmission licences by way of a tender process in certain prescribed circumstances. The circumstances in which an offshore transmission licence application will be subject to a tender process, and the way in which such a tender process will operate, will be prescribed in Regulations made by the Authority at a future date.

4. Proposals for consultation

- 4.1. This chapter sets out Ofgem's proposals for new Application Regulations. It describes the reasons why Ofgem is proposing to introduce the new Application Regulations and the impacts of the proposed changes.
- 4.2. The changes proposed can be broadly categorised as being either:
- ◆ the result of legislative changes introduced by the Energy Bill, or
 - ◆ consolidating the existing relevant requirements, the correction of minor errors, the clarification of certain requirements and a further alignment of the Gas and Electricity licensing regimes.

Changes required by the Energy Bill

- 4.3. This section sets out the changes that Ofgem proposes to make to the Amended Regulations as a result of the new prohibitions introduced into the Gas and Electricity Acts by the Energy Bill and the introduction of BETTA.

Interconnectors

- 4.4. The Government has chosen to give effect to the requirements of the EU Gas and Electricity Directives and EU Electricity Regulation by the introduction of separate gas and electricity interconnector licences. The following discussion is based on the DTI's current thinking on how the interconnector licensing regime will operate. However, the DTI has yet to consult on this and therefore it is possible that this may change.
- 4.5. The Energy Bill provides that the Secretary of State will determine standard licence conditions for electricity and gas interconnector licences. It is intended that these SLCs will be determined, published and designated by the Secretary of State following a consultation process held by the DTI.
- 4.6. The DTI also intends that as far as possible the standard licence conditions will be the same for electricity and gas interconnectors and that each interconnector business will be required to hold a separate licence applicable to each gas and electricity interconnector.

- 4.7. The EU legislation allows the relevant regulatory authority (in this case Ofgem) to grant an exemption from some of the requirements contained in the Electricity and Gas Directives and Electricity Regulation (primarily those requirements relating to third party access). It is proposed that where Ofgem has determined that such an exemption is appropriate (and the European Commission has not requested that the decision to grant such an exemption be amended or withdrawn), this exemption will be given effect by the “switching off” of the licence condition or conditions that contain those requirements that the applicant seeks not to be in effect in that particular licence.
- 4.8. As can be seen in the draft application regulations attached, applicants for an interconnector licence wishing to have those licence conditions that reflect the requirements of the Electricity and Gas Directives and Electricity Regulation not in effect in their licences will have to provide certain specified additional information to Ofgem.²⁶
- 4.9. Based on the above regime Schedule 2 of both the new Gas and Electricity Application Regulations will set out the information and documents that will need to accompany an application in respect of an interconnector licence.
- 4.10. Applicants will be required to:
- ◆ submit details about the interconnector that will be operated²⁷
 - ◆ provide particulars of the applicant’s proposed arrangements for compliance with the applicable requirements of certain standard conditions, and
 - ◆ set out which standard licence conditions it believes should not be in effect and the grounds on which the applicant holds this belief.

²⁶ As the standard licence conditions for interconnectors have not yet been designated by the Secretary of State, the draft application regulations (where they refer to the information to be provided should the applicant seek to have these licence conditions not in effect) do not refer by licence condition number to the relevant licence condition. When it is expedient to do so, the application regulations may be amended so that the specific licence condition numbers are incorporated.

²⁷ It is proposed that each interconnector will be separately licensed. The interconnector covered by the licence will be specified as a schedule to the licence.

- 4.11. Applications for interconnector licences will require the payment of a fee. The fees payable which are set out in Schedule 3 of the new Application Regulations reflect the cost of processing an application for a licence.

Offshore wind

- 4.12. The Energy Bill extends the prohibitions on activities in section 4 of the Electricity Act offshore. The extension of these prohibitions and the resulting extension of the licensing and exemption framework offshore may require some changes to the Amended Regulations. Policy has not, however, evolved sufficiently to allow the incorporation of any necessary changes into these new Application Regulations which are the subject of this consultation.
- 4.13. Ofgem will consult on any changes to the Electricity Application Regulations, should they be required, at the appropriate time.

BETTA

- 4.14. BETTA will introduce a single set of transmission and trading arrangements across Great Britain and a new licensable activity of “participation in transmission”.
- 4.15. As explained above, the BETTA proposals have been the subject of extensive consultation by Ofgem and the DTI. In the light of these proposals Ofgem has now considered what changes, if any, need to be made to the licence application arrangements for transmission to take account of BETTA.
- 4.16. Ofgem considers that a number of changes are required to the Amended Application Regulations for BETTA. These changes largely reflect BETTA policy that has been developed in Ofgem/DTI consultations on BETTA.
- 4.17. In particular, a number of changes are required to the Amended Regulations to take account of the introduction of a new licensable activity of “participation in transmission” in place of the existing licensable activity of “transmission”.
- 4.18. Under BETTA existing transmission activities will be separated into system operation activities and transmission ownership activities. Currently, each of the three transmission licences in Great Britain relates to a separate geographical

area and that licensee undertakes all activities relating to transmission within that area. The Electricity Act 1989, in particular the concept of “authorised area”, prevents more than one transmission licence applying to any given geographical area. Under BETTA, the GB system operator will be responsible for system operation activities on a GB basis while the three existing transmission licensees will be responsible for transmission ownership activities in areas based upon their existing licensed areas (England and Wales for the National Grid Company (NGC), southern Scotland for SP Transmission Limited and northern Scotland for Scottish Hydro-Electric Transmission Limited). Given that it is expected that NGC will be the GB system operator under BETTA it will be necessary in Scotland for more than one transmission licensee to hold a transmission licence in relation to any given area. In order to provide for this the Energy Bill proposes that the concept of “authorised area” is removed from the Electricity Act 1989.

- 4.19. While, in order to provide for the introduction of a GB system operator under BETTA it has been necessary to remove the existing concept of “authorised area” from the Electricity Act 1989, Ofgem and the DTI explained in the December 2002²⁸ and June 2003²⁹ consultation papers on electricity transmission licences under BETTA that it would be necessary to limit, through licence conditions, the activities that each transmission licensee could undertake and also the geographic areas in which they could undertake those activities. In particular Ofgem/DTI explained that it was not intended, as part of the introduction of BETTA, to enable licensees to undertake transmission ownership activities outside of their existing “authorised areas”. Ofgem and the DTI’s April 2004 “near final” publication of electricity transmission licences under BETTA³⁰ included the most recent legal text for these restrictions (included as special condition B in each of the three transmission licensees’ licences).
- 4.20. In the June 2003 consultation on transmission licences under BETTA Ofgem and the DTI explained that in view of the adopted policy approach under BETTA (of

²⁸ “Regulatory framework for transmission licensees under BETTA. Volume 2: Electricity transmission licences under BETTA”, Ofgem/DTI December 2002, Ofgem 88/02 Vol 2.

²⁹ “Regulatory framework for transmission licensees under BETTA – Second consultation on electricity transmission licences under BETTA”, Ofgem/DTI June 2003, Ofgem 59a/03.

³⁰ “Publication of ‘near final’ electricity transmission licences under BETTA”, Ofgem/DTI April 2004, Ofgem 82/04.

making only those changes that are necessary for the introduction of BETTA), if Ofgem were intending to allow a transmission licensee (either an existing transmission licensee or a new applicant) to undertake transmission ownership activities in a geographic area already covered in another transmission licensee's licence it would be necessary for Ofgem to seek to modify the incumbent transmission licensee's licence to remove that area from the incumbent transmission licensee's transmission licence.

- 4.21. In view of the policy approach adopted under BETTA to have a single GB system operator and to maintain existing geographical responsibilities in relation to transmission ownership activities, Ofgem considers that it will be necessary for an applicant to provide as part of its application a description of the types of activities which constitute 'participation in transmission' that the applicant wishes to undertake. It will also be necessary for applicants to specify the geographic area in which they are seeking to undertake these activities. Amendments have been proposed to the Amended Regulations to this effect.
- 4.22. In addition, the Energy Bill proposes changes to the Electricity Act 1989 which will allow the Authority (with the consent of the licensee) to change a licensee's 'specified area'. Similar arrangements are currently in place for electricity distribution licensees and Ofgem has, in developing arrangements for transmission, adopted the model used for electricity distribution. Changes have therefore been made to the Amended Regulations to allow for a transmission licensee to apply for a modification of its area and to prescribe an application fee to be paid in connection with any such application.
- 4.23. Finally, under BETTA the Secretary of State will determine a new set of SLCs for electricity transmission licences. The Amended Regulations require that the applicant sets out in its application how it will comply with the SLCs and the extent to which it considers some (or all) of those SLCs should not apply (giving reasons for its views). The new Application Regulations will refer to the new set of SLCs for electricity transmission licences which will be determined by the Secretary of State under the Energy Bill. If the new Application Regulations come into force after the date the new SLCs are determined, it may be necessary or appropriate to change the scope of the definition of "standard condition" for

the purposes of the Amended Regulations pending the date upon which the new Application Regulations take effect.

Improvements to the Amended Regulations

4.24. This section sets out the changes which Ofgem proposes to make to the Amended Regulations to make them more user-friendly. These changes include:

- ◆ the consolidation of the Application Regulations with the Amendment Regulations into new Application Regulations
- ◆ the clarification of some requirements
- ◆ proposed changes to application fees
- ◆ correction of typographical errors, and
- ◆ an alignment of the new Gas and Electricity Application Regulations

Consolidation of Application and Amendment Regulations

4.25. The Gas and Electricity Application Regulations currently exist as four separate documents:

- ◆ The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2001 SI 3353
- ◆ The Electricity (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2001 SI 3354
- ◆ The Gas (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003 SI 847, and
- ◆ The Electricity (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003 SI 848

4.26. Applicants for gas or electricity licences must, at present, make reference to the relevant (Gas or Electricity) Application Regulations and relevant Amendment Regulations to determine the information that they are required to provide in an application.

- 4.27. Ofgem considers that the current arrangements are not as clear as they could be. Applicants have experienced difficulties understanding the requirements of the Amended Regulations because they are contained in two sets of regulations. Ofgem frequently receives applications where applicants:
- ◆ fail to provide information required by the Amended Regulations, and/or
 - ◆ include information that is no longer required.
- 4.28. In line with its commitment to make sure that the Amended Regulations and licensing process are as comprehensible and user friendly as possible, Ofgem proposes to consolidate the Application Regulations and the Amendment Regulations, with the proposed changes as a result of the Energy Bill, to produce one new set of new Application Regulations which sets out the requirements for applications made under the Gas Act, and one document which sets out the requirements in respect of applications made under the Electricity Act.
- 4.29. Ofgem considers that these changes will aid applicants by making the new Application Regulations clearer and easier to understand. It should also prevent the inclusion of information which is no longer required or the omission of information which is required by applicants.

Clarification of requirements

Criminal Convictions

- 4.30. The Amended Regulations introduced a requirement for applicants to provide a declaration about any unspent criminal convictions in respect of the applicant or any of the following persons specified in the Amended Regulations:
- ◆ the current directors of the applicant, including any shadow directors, or where applicable the corresponding officers³¹

³¹ A shadow director is defined in the Companies Act 1985 s741 as "a person in accordance with whose instructions the directors of the company are accustomed to act". A person is not deemed to be a shadow director if the directors act on advice given by him or her in a professional capacity. An officer is defined in the Companies Act 1985 s744 as "in relation to a body corporate, includes a director, manager or secretary".

- ◆ any holding company of the applicant and any parent undertaking of the applicant
 - ◆ if the applicant is neither a body corporate nor a sole trader, the person(s) in whom effective control of the applicant rests, and
 - ◆ any person who holds 20 per cent or more of any class of the shares of the applicant.
- 4.31. A number of applicants have sought to clarify whether the Amended Regulations require applicants to supply a declaration about any unspent criminal convictions for the holding company or directors of the holding company should one exist.
- 4.32. Ofgem proposes that the new Application Regulations make clear that the requirement for a declaration of unspent criminal convictions relates to:
- ◆ the current directors of the applicant, including any shadow directors, or where applicable the corresponding officers
 - ◆ the ultimate holding company and its directors
 - ◆ if the applicant is neither a body corporate nor a sole trader, the person(s) in whom effective control of the applicant rests, and
 - ◆ any person who holds 20 per cent or more of any class of the shares of the applicant.

Contact Information

- 4.33. The Amended Regulations require applicants to provide "General Particulars", including the name and address in full of the applicant, and to provide contact details for the person to whom enquiries or correspondence concerning the application should be directed³².

³² Schedule 1- The Gas (Application for Licences and Extensions and Restriction of Licences) Regulations 2001 SI 3353 and The Electricity (Application for Licences and Extensions and Restriction of Licences) Regulations 2001 SI 3354.

- 4.34. In addition to the information required by the Amended Regulations Ofgem considers that, in order to discharge its duties, it needs:
- ◆ in the case of a body corporate the applicant's registered address, and
 - ◆ an address in Great Britain to which documents can be sent and where legal notices can be served.
- 4.35. At present Ofgem requests this additional information from applicants once an application has been received. Ofgem considers, however, that this information is important and allows it to discharge its statutory duties effectively.
- 4.36. In particular information about registered addresses allows Ofgem to check application details and together with service addresses for overseas applicants allows Ofgem to ensure that important legal documents are served correctly.
- 4.37. Ofgem proposes to amend the Application Regulations so that an applicant is required to provide:
- ◆ in the case of a body corporate its registered address, and
 - ◆ a service address in Great Britain.

Proposed changes to application fees

- 4.38. In addition to the changes to the application fees required for the introduction of interconnector licences and BETTA set out above, Ofgem considers that it is necessary to make other changes to the fees set out in Schedule 4 of the Amended Regulations.
- 4.39. Ofgem changed the level of fees payable by applicants as a result of the review of the Application Regulations in 2002. Having reviewed the operation of the licensing process since the Amended Regulations came into force in April 2003 Ofgem considers that it is necessary to make a change to the fee payable by applicants for licences authorising the supply of gas to non-domestic premises otherwise than by a gas transporter.
- 4.40. The fees payable by applicants for licences are set out in Schedule 4 of the Amendment Regulations. Schedule 4 of the Gas Amendment Regulations sets a

fee of £300 for an application for a licence which authorises supply of gas to domestic premises where gas is, or is to be, conveyed otherwise than by a gas transporter. The Amendment Regulations do not, however, set out the fee which is payable for an application for a licence to supply gas to non-domestic premises to which gas is, or is to be, conveyed otherwise than by a gas transporter.

- 4.41. In practice Ofgem asks applicants to submit the same information for applications for licences authorising supply of gas to domestic and non-domestic premises where gas is, or is to be, conveyed otherwise than by a gas transporter.
- 4.42. Ofgem proposes to regularise this arrangement in the Gas Application Regulations so that the fee payable by applicants for licences to supply gas which is, or is to be, conveyed otherwise than by a gas transporter to both domestic and non-domestic premises is identical.

Description of proposed locations for gas transporter, and electricity generation, distribution and transmission licences

- 4.43. Ofgem does not use the detailed information provided about actual or proposed locations of infrastructure. Indeed applications for electricity generation, distribution and gas transportation licences are usually submitted for authorisation to operate throughout Great Britain.
- 4.44. In line with Ofgem's commitment to minimise the regulatory burden Ofgem proposes to amend the regulations in respect of electricity generation, distribution and gas transportation licence applications to allow the applicant to specify that the application is for a licence giving authorisation for either Great Britain or a specified area or premises.
- 4.45. For electricity transmission licence applications, Ofgem will require a description of the area to which the application relates and, where it may be different, the area in which the applicant intends to participate in transmission. Ofgem does not intend that detailed information on the location of electrical lines and electrical plant will be necessary.

Alignment of the Gas and Electricity Application Regulations

- 4.46. Ofgem considers that the gas and electricity licensing regimes should, wherever practicable, be closely aligned. Applicants for gas and electricity supply licences are required to submit information about how they will comply with the requirements of a number of SLCs.
- 4.47. 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 to be extremely important. Ofgem considers that the need to protect domestic customers justifies the presence of this additional burden on new entrants.
- 4.48. While the Amended Gas Application Regulations require applicants for a domestic gas supply licence to submit particulars about their proposed arrangements for compliance with SLC 36 - Code of Practice on the Use of Prepayment Meters and SLC 39 – Complaint Handling Procedure, the same requirements do not apply to applicants for a domestic electricity supply licence.
- 4.49. Ofgem considers this to be inconsistent with its policy to align the gas and electricity markets wherever possible. Ofgem therefore proposes to change the Electricity Regulations to require applicants to provide, in line with the Gas Regulations, particulars about proposed arrangements for compliance with SLC 36 - Code of Practice on the Use of Prepayment Meters and SLC 39 – Complaint Handling Procedure.
- 4.50. Ofgem does not consider that this should increase the regulatory burden on applicants as there is an existing requirement under SLC 27³³ for a licensee to prepare, consult with energywatch³⁴ and then submit to the Authority particulars about proposed arrangements for compliance with SLC 36 and SLC 39.

³³ Electricity Supply Licence – Standard Conditions, SLC 27 – Preparation, review of and compliance with Customer Service Codes

³⁴ The strategic goal of the Gas & Electricity Consumer Council, known as energywatch, is to protect and promote the interests of present and future energy consumers.

Correction of typographical errors

Typographical errors in the explanatory notes

- 4.51. Whilst not part of the Amended Regulations the explanatory note provides a brief description of the regulations and their purpose.
- 4.52. Paragraph 2 of the explanatory note attached to the Gas and Electricity Amendment Regulations explains, in error, that there is a requirement for a notice of application for extensions to be published in local newspapers. The Amended Regulations require applicants to place a notice for extensions only on Ofgem's website or on their own website with a link from Ofgem's website.
- 4.53. While not part of the Amended Regulations the explanatory note should have explained the need for notices of applications for restrictions of licences to be published in local newspapers. This error has caused confusion and Ofgem proposes to change the Explanatory Note to correct this error.

Typographical errors in the Amended Regulations

- 4.54. Applicants for licences have highlighted a number of typographical errors within the Amended Regulations. While these errors are minor punctuation errors such as misplaced or missing brackets Ofgem considers it is desirable that these errors are corrected to ensure that the Application Regulations are as clear and user friendly as possible. Ofgem proposes, therefore, to correct the errors which have been identified to remove any ambiguity in the new Application Regulations.
- 4.55. The typographical errors that have been identified together with the proposed changes are set out in table 1.

Table 1. Correction of typographical errors

Location	Extract of paragraph	Amendment
Gas Application Regulations. Schedule 1. Paragraph 2(c).	the full names and addresses of its current directors (including any shadow directors within the meaning of section 741 of the Companies Act 1985(d) or, where applicable the corresponding officers	Insert a closed bracket after Companies Act 1985(d)
Gas Application Regulations. Schedule 1. Paragraph 2(4)	Where any person (other than a person whose name is given at paragraph 2(2)(d) or paragraph 2(3) (above) holds 20 per cent or more of any class of shares	Insert a closed bracket after (above)
Gas Amendment Regulations. Page 2. Paragraph 3.	4. Give particulars of any criminal convictions (other than for offences under the Road Traffic Offenders Act 1988(b) or convictions in respect of which the person has become rehabilitated under the Rehabilitation of Offenders Act 1974(c) of the applicant or any person specified	Insert a closed bracket after Rehabilitation of Offenders Act 1974(c)
Electricity Amendment Application Regulations. Page 2. Paragraph 3.	4. Give particulars of any criminal convictions (other than for offences under the Road Traffic Offenders Act 1988(a) or convictions in respect of which the person has become	Insert a closed bracket after Rehabilitation of Offenders Act 1974(b)

	rehabilitated under the Rehabilitation of Offenders Act 1974(b) of the applicant or any person specified	
Electricity Amendment Regulations. Page 2. Paragraph 5(3)(b). Line 7.	19 (Code of Practice on Procedures with Respect to Site Access); and 21(Complaint Handling Procedure).	Delete semi-colon after Access) and replace with a comma

Appendix 1 Draft Application Regulations

October 2004

STATUTORY INSTRUMENTS

2004 No.

GAS

The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2004

Made - - - [INSERT]

Coming into force [INSERT]

The Gas and Electricity Markets Authority¹, in exercise of the powers conferred on it by sections 7B(1), (2) and (11)², 47 and 48(1) of the Gas Act 1986³, and of all other powers enabling it in that behalf, hereby makes the following Regulations—

Citation, commencement and transitional

1. (1) These Regulations may be cited as the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2004, and shall come into force on 1 September 2004. The Regulations, excluding those that would only apply to an application for an interconnector licence, shall come into force on [INSERT] and the remaining provisions, in so far as they apply to an application for an interconnector licence, shall come into force on [INSERT].

(2) Where an original application is outstanding at the date these Regulations come into force -

- (a) the applicant shall provide to the Authority any information required by these Regulations in addition to the information included in the original applications or a statement to the effect that no further information would be required by the Authority; and

¹ The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27).

² Section 7B of the Gas Act was inserted by section 74(7) of the Utilities Act 2000.

³ 1986 c.44.

- (b) if the applicant provides the information referred to in sub-paragraph (a), the original application will be taken to be an application made under these Regulations.

Revocation

2. Subject to regulation 1, The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2001 and the Gas (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003 are hereby revoked.

Interpretation

3.–(1) In these Regulations, unless the context otherwise requires–

“the 2000 Act” means the Utilities Act 2000;

“the Act” means the Gas Act 1986;

“the 2004 Act” means the Energy Act 2004;

“application” means an application for a licence, an application for an extension of a licence or an application for a restriction of a licence under the Act; and references to an application in respect of a licence shall be construed accordingly;

“the Authority” means the Gas and Electricity Markets Authority established by section 1 of the 2000 Act;

“domestic premises” means premises used wholly or mainly for domestic purposes;

“extension”, in relation to a gas transporter licence, means an extension of the licence under section 7(4) of the Act and, in relation to a gas supplier licence or a gas shipper licence, means an extension of the licence under section 7A(4) of the Act;

“interconnector licence” means a licence granted or to be granted under section 7ZA of the Act;

“original application” means an application made under the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2001 as amended by the Gas (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003;

“shipper licence” means a licence granted or to be granted under section 7A(2) of the Act;

“supplier licence” means a licence granted or to be granted under section 7A(1) of the Act;

“transporter licence” means a licence granted or to be granted under section 7 of the Act;

“restriction”, in relation to a gas transporter licence, means a restriction of the licence under section 7(4A) of the Act and, in relation to a gas supplier licence or a gas shipper licence, means a restriction of the licence under section 7A(6) of the Act; and

“ultimate holding company” means a holding company (within the meaning of sections 736, 736A and 736B of the Companies Act 1985) of the licensee which is not itself a subsidiary of another company; who is in the position to control, or exercise significant influence over, the policy of the licensee by virtue of rights under contractual arrangements or rights of ownership which are held by the company or of which the company is a beneficiary.

(2) In these Regulations, unless the context otherwise requires, a reference to a standard condition is a reference to a standard condition in relation to licences under section 7, 7ZA, 7A(1) or 7A(2) of the Act, as the case may be, which is determined under section 81(2) of the 2000 Act or section 147(1) of the 2004 Act, subject to such modifications of the standard conditions made under Part I of the Act or the 2000 Act after the determination under that section.

(3) Unless the context otherwise requires, other expressions appearing in these Regulations shall have the same meaning, if any, as they have in Part I of the Act.

(4) In these Regulations, unless the context otherwise requires—

- (a) any reference to a numbered regulation or Schedule is a reference to the regulation or Schedule bearing that number in these Regulations; and
- (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which the reference occurs.

Manner of application

4. An application shall be -

- (a) made in writing, addressed to the Authority and delivered or sent by prepaid post to the Authority at its principal office; and
- (b) signed and dated by or on behalf of the applicant, stating, where signed on behalf of the applicant, the capacity of the signatory.

Form of application

5. An application shall be in the form specified in Schedule 1 or a form to the like effect, and shall contain the information there specified.

Additional information and documents to accompany application

6.–(1) Subject to paragraphs (2) and (3)–

- (a) an application in respect of a gas supplier licence shall be accompanied by the information and documents specified in Part I of Schedule 2;
- (b) an application in respect of a gas shipper licence shall be accompanied by the information and documents specified in Part II of Schedule 2;
- (c) an application in respect of a gas transporter licence shall be accompanied by the information and documents specified in Part III of Schedule 2; and
- (d) an application in respect of a gas interconnector licence shall be accompanied by the information and documents specified in Part IV of Schedule 2.

(2) The obligation imposed by paragraph (1) shall, to the extent that information and documents are specified in Schedule 2 by reference to, or in relation to, a standard condition, apply-

- (a) subject to paragraph (3), in the case of an application for a licence, other than for a gas supplier licence of the type described in section 8(2) of the Act, as if the standard condition in question were to be included and have effect in any licence granted as a result of the application; and
- (b) in the case of an application for an extension or restriction of a licence, in relation to such of the standard conditions in question as have been included and have effect in that licence.

(3) Where a modification to any standard condition is specified in accordance with paragraph 3(1) of Schedule 1, the obligation imposed by paragraph (2)(a) above shall be modified accordingly.

Application fees

7.–(1) Subject to paragraph (2), each application of the description specified in column 1 of Schedule 3 shall be accompanied by the corresponding fee specified in column 2 of that Schedule.

(2) Where more than one such fee would, apart from this paragraph, be payable in respect of a particular application, only the higher or highest such fee, as the case may be, shall be payable.

Notice of applications

8.–(1) The period prescribed for the purpose of section 7B(2) of the Act (notice of applications) is ten working days (‘the prescribed period’).

(2) The applicant shall take all reasonable steps to ensure that notice of application is published within the prescribed period either by -

- (a) requesting the Authority to place the notice on the website address of the Authority (at “www.ofgem.gov.uk” or at such other website address as may be notified to the applicant by the Authority in writing); or
- (b) publishing the notice on the website address of the applicant and requesting the Authority to place a link to the applicant website address on the website address of the Authority (at “www.ofgem.gov.uk” or at such other website address as may be notified to the applicant by the Authority in writing).

(3) In the event that it is not practicable to publish notice of application on the website address of the Authority, the Authority may specify by notice in writing an alternative means of publication.

(4) Where an application is for the restriction of a licence, the applicant shall also ensure that notice of application is published within the prescribed period in such newspapers as are calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates.

(5) In this Regulation “working day” shall have the same meaning as in section 64 of the Electricity Act 1989⁴.

The seal of the Gas and Electricity Markets Authority
here affixed is authenticated by the signature of

.....
A member of the Authority

[date 2004]

⁴ 1989 c.29.

FORM OF APPLICATION IN RESPECT OF A TRANSPORTER LICENCE, SUPPLIER LICENCE, SHIPPER LICENCE OR INTERCONNECTOR LICENCE UNDER THE GAS ACT 1986

GENERAL PARTICULARS

1. State—

(1) name and registered address of applicant in full, in the case of a partnership or other joint venture (other than a body corporate), give the names and addresses of each party concerned.

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(2) name, address, facsimile (where applicable), telephone number and electronic mail address (where applicable) of person to whom correspondence or enquiries concerning the application should be directed.

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.....

(3) where the address provided in 1(1) above is not an address in Great Britain please provide an address in Great Britain for service of documents.

.....

(4) whether the application is in respect of a supplier licence, a shipper licence, a transporter licence, or an interconnector licence⁵.

.....

(5) whether the application is for a licence, an extension of a licence or a restriction of a licence⁶.

.....

(6) the date from which the licence or extension or restriction is desired to take effect.

.....

⁵ An application may not be made on the same form in respect of more than one of these types of licence.

⁶ An application may not be made for the extension of an interconnector licence or a licence which authorises only the supply to premises of gas which has been conveyed to the premises otherwise than by a public gas transporter.

(7) the kind of gas to which the application relates⁷.

.....

2.-(1) state whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the legal status).

.....

(2) where the applicant is a body corporate, state -

(a) the jurisdiction under which it is incorporated.

.....

.....

(b) if applicable, its registered number.

.....

(c) the full names and addresses of its current directors (including any shadow directors within the meaning of section 741 of the Companies Act 1985)⁸ or, where applicable, the corresponding officers.

.....

.....

.....

(d) the name and registered office of any ultimate holding company and the current directors of any such company (within the meaning of sections 736, 736A and 736B of the Companies Act 1985) of the applicant and the name and registered or principal office of any parent undertaking (within the meaning of section 258 of the Companies Act) of the applicant.

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(3) where the applicant is neither a body corporate nor a sole trader, give the name(s) and address(es) of the person or persons in whom effective control of the applicant rests.

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.....

(4) where any person (other than a person whose name is given at paragraph 2(2)(d) or paragraph 2(3) above) holds 20 per cent or more of any class of the shares⁹ of the applicant,

⁷ For example, natural gas, liquid petroleum gas, coal bed methane. Note that in certain circumstances a licence is not required in respect of the conveyance or supply of propane or butane.

⁸ 1985 c .6..

⁹ In this sub-paragraph, references to shares-

(i) in relation to an applicant with a share capital, are to allotted shares;

give the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.

.....
.....
.....

(5) give particulars of any licences under the Act or the Electricity Act 1989¹⁰ held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person in relation to the applicant¹¹.

.....
.....
.....

DETAILS OF APPLICATION

3. Where -

(1) the application is for a licence, other than a gas supplier licence of the type specified in section 8(2) of the Act, describe—

- (a) any modification requested to any of the standard conditions for the type of licence for the purposes of section 8(3) of the Act; and
- (b) the grounds on which the applicant believes that—
 - (i) any such modification is requisite to meet the circumstances of the particular case; and
 - (ii) if the application is for a gas shipper licence or gas supplier licence, any such modification is such that no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences (including the applicant).

(2) the application is for a gas supplier licence of the type specified in section 8(2) of the Act, specify, with reasons, any standard conditions that in the applicant's opinion should be included and have effect in the licence.

.....

-
- (ii) in relation to an applicant with capital but no share capital, are to rights to share in the capital of the applicant;
 - (iii) in relation to an applicant without capital, are to interests-
 - (aa) conferring any right to share in the profits or liability to contribute to the losses of the applicant; or
 - (bb) giving rise to an obligation to contribute to the debts or expenses of the applicant in the event of a winding up.

¹⁰ 1989 c.29.

¹¹ In this sub-paragraph "related person" means-

- (i) in relation to an applicant who is an undertaking within the meaning of section 259 of the Companies Act 1985 ("the principal undertaking"), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 258 of that Act; and
- (ii) in relation to any applicant (including such an undertaking), a connected person of the applicant within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992 (c.12).

.....

CRIMINAL OFFENCES

4. Give particulars of any criminal convictions of the applicant and any person specified in paragraph 2(2)(c), 2(2)(d), 2(3) or 2(4) (other than for offences under the Road Traffic Offenders Act 1988¹² or convictions in respect of which the person has become rehabilitated under the Rehabilitation of Offenders Act 1974¹³).

¹² 1988 c.53.

¹³ 1974 c.53.

SCHEDULE 2

Regulation 6

PART I

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A SUPPLIER LICENCE¹⁴

1. A gas supplier licence may authorise the holder to supply gas—
 - (a) to any premises;
 - (b) only to premises specified in the licence, or to premises of a description so specified;
or
 - (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated.

(see section 7A(1) of the Act)

Please specify whether (a), (b) or (c) above is applicable. Provide a sufficient description adequately specifying¹⁵ the premises or a description of the premises and the location of the premises intended to be supplied, and, in the case of an application that relates to (c) above, also the specified area. Also state whether the application relates to domestic premises.

2. For all applications for gas supplier licences, or extensions of such licences, state whether the licence or extension is to authorise the supply of gas to premises to which it is conveyed by a gas transporter, and if not give details of any exemption under section 6A of the Act under which the gas is or will be conveyed.
3. If the application relates to the supply of gas to domestic premises to which gas is, or is to be, conveyed by a gas transporter, the applicant shall provide 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).

Restriction of a supplier licence

4. If the application is for a restriction of a licence—

¹⁴ In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they significantly differ from or add to the most recent information or documents which were provided in relation to the same requirement—

- (i) with an application made by the applicant in accordance with these Regulations; or
- (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

¹⁵ The description should enable the areas, location or premises concerned to be adequately and readily identified by map, if the applicant so desires, or by any other convenient means.

- (a) an estimate of the total number of premises to which the applicant supplies gas at the time of the application and which the applicant would cease to supply if the application were acceded to (“relevant premises”) and;
- (b) unless there are, at the date of the application, no relevant consumers (within the meaning of section 7A(10) of the Act) in relation to the applicant, a description of the applicant’s proposed arrangements under section 7A(9) of the Act for–
 - (i) ensuring continuity of supply for all such relevant consumers; and
 - (ii) in the case of each such consumer who is supplied with gas in pursuance of a contract (within the meaning of that section), securing such continuity on the same terms as nearly as may be as the terms of the contract.

PART II

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A SHIPPER LICENCE¹⁶

1. A gas shipper licence may authorise the holder to–
 - (a) make arrangements generally with any gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
 - (b) make such arrangements for purposes connected with the supply of gas to specified premises, being–
 - (i) any premises in a specified area;
 - (ii) any premises of a specified description (whether in a specified area or throughout Great Britain); or
 - (iii) particular premises.

(see section 7A(2) of the Act)

Provide a sufficient description adequately specifying the premises or a description of the premises, and also the specified area, if any, to which the application relates.

PART III

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A TRANSPORTER LICENCE¹⁷

1. A gas transporter licence may authorise the holder to convey gas–
 - (a) to any premises, and/or

¹⁶ In this part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement

- (i) with an application made by the applicant in accordance with these Regulations; or
- (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

¹⁷ In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they significantly differ from or add to the most recent information or documents which were provided in relation to the same requirement–

- (i) with an application made by the applicant in accordance with these Regulations; or
- (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

- (b) to any pipe-line system operated by another gas transporter -
 - (i) throughout Great Britain; or
 - (ii) within a specified area or areas.

Please specify which of (a) or (b) or both is applicable, and, if (b) is applicable, which (i) and (ii) is applicable, and in the case of (ii) provide a sufficient description adequately specifying the area to which the application relates¹⁸.

Also state whether the application relates to domestic premises. For applications within paragraph 1(b) above, also specify the description of pipe-line system to which the application relates (stating, in particular, whether it relates only to any system which is designed to receive gas at an operating pressure not exceeding 7 bar gauge).

- 2. Provide 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 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).

Restriction of a transporter licence

- 3. If the application is for a restriction of a licence—
 - (a) an estimate of the total number of premises to which the applicant conveys gas at the time of the application and to which the applicant would cease to so convey if the application were acceded to (“the relevant premises”);
 - (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in sub-paragraph (c) below) in relation to the applicant, a description of the applicant's proposed arrangements to ensure compliance with section 10 of the Act (ensuring the connection to all such relevant consumers is maintained); and
 - (c) For the purposes of sub-paragraph (b), a person is a relevant consumer if—
 - (i) immediately before the restriction takes effect, he is connected to the pipe-line system of the holder of the licence; and
 - (ii) his premises are to be excluded from the licence by the restriction.

¹⁸ The description should enable the areas, location or premises concerned to be adequately and readily identified by map, if the applicant so desires, or by any other convenient means.

PART IV

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF AN INTERCONNECTOR LICENCE

1. An application in respect of an interconnector licence must specify the actual or proposed point of connection to a gas transportation or gas distribution network. Where the applicant is unable to specify a point of connection the applicant should provide Ordnance Survey Grid Reference co-ordinates for the proposed point of connection

2. In relation to an application in respect of an interconnector that was not completed by 15 July 2003, the applicant may seek to have any or all of the following standard licence conditions relating to -

- (a) the licensee's regulated revenue entitlement;
- (b) the charging methodology to apply to third party access to the licensee's interconnector; and
- (c) the requirement to offer terms to an applicant for access to the licensee's interconnector;

not to be in effect in the interconnector licence to which this application relates.

3. Where the applicant so seeks for any or all of the licence conditions relating to the matters referred to in paragraphs 2(a), 2(b) and 2(c) above not to be in effect the following additional information must be provided in respect of those licence conditions -

- (a) the period of time for which the applicant requests that the licence condition or conditions not be in effect;
- (b) a statement setting out the evidence and reasoning as to why the applicant considers -
 - (i) the investment in the interconnector enhances competition in gas supply and enhances security of supply;
 - (ii) the level of risk attached to the investment to be made in relation to the interconnector is such that the investment would not take place unless those licence conditions were not in effect;
 - (iii) that, should the licence conditions not be in effect for the period of time sought, this will not be detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected; and
- (c) a further statement that -
 - (i) the interconnector will be owned by a natural or legal person who is separate, at least in terms of its legal form, from the system operators in whose systems the interconnector to which this application relates will be built; and
 - (ii) charges will be levied on users of the interconnector.

SCHEDULE 3

Regulation 7

APPLICATION FEES

COLUMN 1	COLUMN 2
<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)	400
2. Application for licence including authorisation to supply gas to premises to which gas is, or is to be, conveyed otherwise than by a gas transporter	300
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	1150
4. Application for extension of a licence so as to include authorisation to supply gas to domestic premises to which gas is conveyed by a gas transporter	1000
5. Application for any other extension or restriction	400
<i>Gas Shipper</i> 6. Any application	300
<i>Gas Transporter</i> 7. Application (other than one for an extension or restriction) for a gas transporter licence	950
8. Application for extension or restriction of a gas transporter licence	125
<i>Gas interconnector</i> 9. Application for a gas interconnector licence	950

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the information, and other documents that are required to be submitted with applications for gas transporter, gas shipper, gas supplier and gas interconnector licences (and for extensions or restrictions of supplier and transporter licences) under the Gas Act 1986, as amended by the Utilities Act 2000 and the Energy Act 2004. They specify the form and manner of such applications. These Regulations also set out the manner in which applications are to be published.

These Regulations come into force on [INSERT]. Regulation 1 provides for the citation, commencement, transitional and savings provisions, and Regulation 3 provides for general interpretation.

Regulation 4 deals with the manner of applications.

Regulation 5 concerns the form of applications, and incorporates Schedules 1 and 2 that specify their form, and the information and documents to accompany them.

Regulation 6 specifies the additional information and documents to accompany applications. It incorporates Schedule 3, which covers, respectively, applications for:

- gas supplier licences, at Part I;
- gas shipper licences, at Part II;
- gas transporter licences, at Part III; and
- gas interconnectors, at Part IV.

Regulation 7 incorporates Schedule 4, which specifies the fees payable in respect of applications.

Regulation 8 provides for the notice period and publication requirements for applications. It requires applicants to ensure that applications are published either on the Ofgem website or their own website with a link from the Ofgem website. If the application is for a restriction the applicant must also publish the notice in local newspapers.

STATUTORY INSTRUMENTS

2004 No.

ELECTRICITY

The Electricity (Applications for Licences, Modification of an Area and Extensions and Restrictions of Licences) Regulations 2004

Made - - - [INSERT]

Coming into force [INSERT]

The Gas and Electricity Markets Authority¹, in exercise of the powers conferred on it by sections 6A(2), (3) and (6)², 60 and 64(1)³ of the Electricity Act 1989, and of all other powers enabling it in that behalf, hereby makes the following Regulations—

Citation, commencement, transitional and savings

1. (1) These Regulations may be cited as the Electricity (Applications for Licences, Modification of an Area and Extensions and Restrictions of Licences) Regulations 2004. The Regulations, excluding those that would only apply to an application for an interconnector licence, shall come into force on [INSERT] and the remaining provisions, in so far as they apply to an application for an interconnector licence, shall come into force on [INSERT].
- (2) Where an original application is outstanding at the date these Regulations come into force -
 - (a) the applicant shall provide to the Authority any information required by these Regulations in addition to the information included in the original application or a statement to the effect that no further information would be required by the Authority; and

¹ The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27).

² With effect from 1 October 2001 section 6 of the Electricity Act 1989 (c.29) was substituted by section 30 of the Utilities Act 2000 which introduced a new section 6 and sections 6A and 6B into the 1989 Act.

³ See the definition of 'prescribed'. The definition was amended by section 108 of, and paragraphs 24, 38(1) and (6) of Part II of Schedule 6 to, the Utilities Act 2000.

- (b) if the applicant provides the information referred to in sub-paragraph (a), the original application will be taken to be an application made under these Regulations.

Revocation

2. Subject to Regulation 1, the Electricity (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2001 and the Electricity (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003 are hereby revoked.

Interpretation

3.–(1) In these Regulations, unless the context otherwise requires–

“the 2000 Act” means the Utilities Act 2000;

“the Act” means the Electricity Act 1989;

“the 2004 Act” means the Energy Act 2004;

“application” means an application for a licence, an application for a modification of an area of a licence, an application for an extension of a licence or an application for a restriction of a licence under the Act; and references to an application in respect of a licence shall be construed accordingly;

“the Authority” means the Gas and Electricity Markets Authority established by section 1 of the 2000 Act;

“distribution licence” means a licence granted or to be granted under section 6(1)(c) of the Act;

“domestic premises” means premises used wholly or mainly for domestic purposes;

“extension”, in relation to a supply licence, means an extension of the licence under section 6(4) of the Act and, in relation to a distribution licence, means an extension of the licence under section 6(6) of the Act;

“generation licence” means a licence granted or to be granted under section 6(1)(a) of the Act;

“interconnector licence” means a licence granted or to be granted under section 6(1)(e) of the Act;

“modification of an area”, in relation to a transmission licence, means a modification of an area of the licence under section 6(6B) of the Act;

“original application” means an application made under the Electricity (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2001 as amended by the Electricity (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003;

“restriction”, in relation to a supply licence, means a restriction of the licence under section 6(4) of the Act and, in relation to a distribution licence, means a restriction of the licence under section 6(6) of the Act, and, only in relation to a transmission licence for the purpose of Regulation 8(4) and Part II of Schedule 2 of these Regulations means a modification of an area of the licence under section 6(6B) of the Act by a restriction of the area of the licence;

“supply licence” means a licence granted or to be granted under section 6(1)(d) of the Act;

“transmission licence” means a licence granted or to be granted under section 6(1)(b) of the Act; and

“ultimate holding company” means a holding company (within the meaning of sections 736, 736A and 736B of the Companies Act 1985) of the licensee which is not itself a subsidiary of another company; who is in the position to control, or exercise significant influence over, the policy of the licensee by virtue of rights under contractual arrangements or rights of ownership which are held by the company or of which the company is a beneficiary.

(2) In these Regulations, unless the context otherwise requires, a reference to a standard condition is a reference to a standard condition in relation to licences under section 6(1)(a), (b), (c), (d) and (e) of the Act which is determined under section 33(1) of the 2000 Act, or sections 134(1) and 143(1) of the 2004 Act, subject to such modifications of the standard conditions made under Part I of the Act, the 2000 Act, or the 2004 Act after the determination under those sections.

(3) Unless the context otherwise requires, other expressions appearing in these Regulations shall have the same meaning, if any, as they have in Part I of the Act.

(4) In these Regulations, unless the context otherwise requires—

- (a) any reference to a numbered regulation or Schedule is a reference to the regulation or Schedule bearing that number in these Regulations; and
- (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which the reference occurs.

Manner of application

4. An application shall be—

- (a) made in writing, addressed to the Authority and delivered or sent by prepaid post to the Authority at its principal office; and
- (b) signed and dated by or on behalf of the applicant, stating, where signed on behalf of the applicant, the capacity of the signatory.

Form of application

5. An application shall be in the form specified in Schedule 1 or a form to the like effect, and shall contain the information there specified.

Additional information and documents to accompany application

6.—(1) Subject to paragraphs (2) and (3)—

- (a) an application in respect of a generation licence shall be accompanied by the information and documents specified in Part I of Schedule 2;
- (b) an application in respect of a transmission licence shall be accompanied by the information and documents specified in Part II of Schedule 2;
- (c) an application in respect of a distribution licence shall be accompanied by the information and documents specified in Part III of Schedule 2;
- (d) an application in respect of a supply licence shall be accompanied by the information and documents specified in Part IV of Schedule 2; and
- (e) an application in respect of an interconnector licence shall be accompanied by the information and documents specified in Part V of Schedule 2.

(2) The obligation imposed by paragraph (1) shall, to the extent that information and documents are specified in Schedule 2 by reference to, or in relation to, a standard condition, apply-

- (a) subject to paragraph (3), in the case of an application for a licence, as if the standard condition in question were to be included and have effect in any licence granted as a result of the application; and
- (b) in the case of an application for a modification of an area, an extension or restriction of a licence, in relation to such of the standard conditions in question as have been included and have effect in that licence.

(3) Where a modification to any standard condition is requested in accordance with paragraph 3 of Schedule 1, the obligation imposed by paragraph (2)(a) above shall be modified accordingly.

Application fees

7.–(1) Subject to paragraph (2), each application of the description specified in column 1 of Schedule 3 shall be accompanied by the corresponding fee specified in column 2 of that Schedule.

(2) Where more than one such fee would, apart from this paragraph, be payable in respect of a particular application, only the higher or highest such fee, as the case may be, shall be payable.

Notice of applications

8.–(1) The period prescribed for the purpose of section 6A(3) of the Act (notice of applications) is ten working days ('the prescribed period').

(2) The applicant shall publish the notice of application within the prescribed period either by -

- (a) requesting the Authority to place the notice on the website address of the Authority (at "www.ofgem.gov.uk" or such other website address as may be notified to the applicant by the Authority in writing); or
- (b) publishing the notice on the website address of the applicant and requesting the Authority to place a link to the applicant website address on the website address of the Authority (at 'www.ofgem.gov.uk' or such other website address as may be notified to the applicant by the Authority in writing).

(3) In the event that it is not practicable to publish notice of application as specified in paragraph 2 above, the Authority may specify by notice in writing an alternative means of publication.

(4) Where an application is for the restriction of a licence, the applicant shall also ensure that notice of application is published within the prescribed period in such newspapers as are calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates.

The seal of the Gas and Electricity Markets Authority
here affixed is authenticated by the signature of

.....
A member of the Authority

[date

2004]

FORM OF APPLICATION IN RESPECT OF A GENERATION LICENCE,
TRANSMISSION LICENCE, DISTRIBUTION LICENCE, SUPPLY LICENCE OR
INTERCONNECTOR LICENCE UNDER THE ELECTRICITY ACT 1989

GENERAL PARTICULARS

1. State—

(1) name and registered address of applicant in full, in the case of a partnership or other joint venture (other than a body corporate), give the names and addresses of each party concerned.

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(2) name, address, facsimile (where applicable), telephone number and electronic mail address (where applicable) of person to whom correspondence or enquiries concerning the application should be directed.

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(3) where the address provided in 1(1) above is not an address in Great Britain please provide an address in Great Britain for service of documents.

.....
.....

(4) whether the application is in respect of a generation licence, a transmission licence, a distribution licence, a supply licence or an interconnector licence⁴.

.....

(5) whether the application is for a licence, a modification of an area⁵, an extension of a licence or a restriction of a licence⁶.

.....

⁴ Application may not be made on the same form in respect of more than one of these types of licence.

⁵ Application for a modification of an area may only be made in relation to a transmission licence.

⁶ Application may not be made for an extension or restriction of a generation or interconnector licence.

(6) the date from which the licence, the modification of an area or extension or restriction is desired to take effect.

.....

2.-(1) state whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the legal status).

.....

(2) where the applicant is a body corporate, state

(a) the jurisdiction under which it is incorporated.

.....

.....

(b) if applicable, its registered number.

.....

(c) the full names and addresses of its current directors (including any shadow directors within the meaning of section 741 of the Companies Act 1985⁷) or, where applicable, the corresponding officers.

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.....

(d) the name and registered office of any ultimate holding company and its current directors (within the meaning of sections 736, 736A and 736B of the Companies Act 1985) of the applicant and the name and registered or principal office of any parent undertaking (within the meaning of section 258 of the Companies Act 1985) of the applicant.

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(3) where the applicant is neither a body corporate nor a sole trader, give the name(s) and address(es) of the person or persons in whom effective control of the applicant rests.

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.....

⁷ 1985 c.6.

(4) where any person (other than a person whose name is given at paragraph 2(2)(d) or paragraph 2(3) above) holds 20 per cent or more of any class of the shares⁸ of the applicant, give the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.

.....
.....

(5) give particulars of any licences under the Act or the Gas Act 1986⁹ held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person in relation to the applicant¹⁰.

.....
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.....

DETAILS OF APPLICATION

3. If the application is for a licence describe—

- (a) any modification requested to any of the standard conditions for the type of licence for the purposes of section 8A(2) of the Act; and
- (b) the grounds on which the applicant believes that—
 - (i) any such modification is requisite to meet the circumstances of the particular case; and
 - (ii) any such modification is such that -
 - (a) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and
 - (b) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the applicant).

⁸ Reference to shares –

- i) in relation to an applicant with share capital, are to allotted shares;
- ii) in relation to an applicant with capital but no share capital, are rights to share in the capital of the applicant;
- ii) in relation to an applicant without capital, are to interests –
 - a) conferring any right to share in the profits or liability to contribute to the losses of the applicant; and
 - b) giving rise to an obligation to contribute to the debts or expenses of the applicant in the event of winding up.

⁹ 1986 c.44.

¹⁰ In this sub-paragraph “related person” means-

- (i) in relation to an applicant who is an undertaking within the meaning of section 259 of the Companies Act 1985 (“the principal undertaking”), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 258 of that Act; and
- (ii) in relation to any applicant (including such an undertaking), a connected person of the applicant within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992 (c.12).

CRIMINAL OFFENCES

4. Give particulars of any criminal convictions of the applicant and any other person specified in paragraph 2(2)(c), 2(2)(d), 2(3) or 2(4) (other than for offences under the Road Traffic Offenders Act 1988¹¹ or convictions in respect of which the person has become rehabilitated under the Rehabilitation of Offenders Act 1974¹²).

¹¹ 1998 c.53.

¹² 1974 c.53.

SCHEDULE 2

Regulation 6

PART I

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A GENERATION LICENCE

1. A generation licence may authorise the holder to operate –

(a) throughout Great Britain; or

(b) within a specified area or areas or at a specified premise or premises.

Please specify which of (a) or (b) is applicable, and in the case of (b) provide a sufficient description adequately specifying the area or premises to which the application relates¹³.

2. A statement of the extent (if any) to which the applicant considers it necessary for powers under Schedule 2 (compulsory acquisition of land etc) and under Schedule 3 (other powers etc) to the Act to be given through the licence for which he is applying.

¹³ The description should enable the areas to be adequately and readily identified by map if the applicant so desires or by any other convenient means.

PART II

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A TRANSMISSION LICENCE¹⁴

1. Provide a brief description of the activities that the applicant intends to carry out with respect to the transmission of electricity.
2. Provide a sufficient description of –
 - (a) the area to which the application relates; and
 - (b) where different to the area in sub-paragraph (a), the area in which the applicant intends to carry out activities under a transmission licence¹⁵.
3. If the application is for a restriction of a transmission licence, also provide details of any of the following persons who may be affected by the application -
 - (a) any person authorised by a licence granted under section 6(1) of the Act or an exemption granted under section 5(1) of the Act;
 - (b) any person directly connected to the applicant's transmission system; and
 - (c) any other person who may reasonably be affected by the restriction which is the subject of the application.

¹⁴ In this Part of the Schedule, if the application is for a modification of an area, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement –

- (i) with an application made by the applicant in accordance with these Regulations; or
- (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

¹⁵ The description should enable the areas to be adequately and readily identified by map if the applicant so desires or by any other convenient means.

PART III

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A DISTRIBUTION LICENCE¹⁶

1. A distribution licence may authorise the holder to operate –
 - (a) throughout Great Britain; or
 - (b) within a specified area or areas or at a specified premise or premises.

Please specify which of (a) or (b) is applicable, and in the case of (b) provide a sufficient description adequately specifying the area(s) or premise(s) to which the application relates¹⁷.

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.
3. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 6 (Safety and Security of Supplies Enquiry Service), 8 (Provisions Relating to the Connection of Metering Equipment), 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), 19 (Code of Practice on Procedures with Respect to Site Access), and 21 (Complaint Handling Procedure).

Restriction of a distribution licence

4. If the application is for a restriction of a licence-
 - (a) an estimate of the total number of premises to which the applicant distributes electricity at the time of the application and to which the applicant would cease to distribute if the application were acceded to ("relevant premises");
 - (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in sub-paragraph (c) below) in relation to the applicant, a description of the applicant's proposed arrangements to ensure compliance with section 16 of the Act (ensuring the connection of all such relevant consumers is maintained); and
 - (c) For the purposes of sub-paragraph (b), a person is a relevant consumer if –
 - (i) immediately before the restriction takes effect, he is connected to the distribution system of the holder of the licence; and
 - (ii) his premises are to be excluded from the licence by the restriction.

¹⁶ In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement -

- (i) with an application made by the applicant in accordance with these Regulations; or
- (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

¹⁷ The description should enable the areas, location or premises concerned to be adequately and readily identified by map if the applicant so desires or by any other convenient means.

PART IV

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A SUPPLY LICENCE¹⁸

1. A supply licence may authorise the holder to supply electricity –

- (a) to any premises;
- (b) only to premises specified in the licence, or to premises of a description so specified;
or
- (c) only to any premises situated in a specified area, or to premises of a specified
description which are so situated (section 6(3) of the Act).

Please specify which of (a),(b) or (c) above is applicable. Provide a sufficient description adequately specifying¹⁹ the premises or a description of the premises and the location of the premises intended to be supplied, and, in the case of application that relates to (c) above, also the specified area. Also state whether the application relates to domestic premises.

Supply to domestic premises

2. Provide 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), 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), 38 (Provision of Services for Persons who are Blind or Deaf), 39 (Complaint Handling Procedure), and 43 (Contractual Terms – Methods of Payment).

Supply to non-domestic premises

3. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard condition 7 (Duty to Offer Terms for Meter Provision).

Restriction of a supply licence

4. If the application is for a restriction of a licence-

- (a) an estimate of the total number of premises to which the applicant supplies electricity at the time of the application and which the applicant would cease to supply if the application were acceded to ("relevant premises"); and
- (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in sub-paragraph (c) below) in relation to the applicant, a description of the applicant's proposed arrangements under standard condition 22A (Restriction or Revocation: Securing Continuity of Supply) for -

¹⁸ In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement -

- (i) with an application made by the applicant in accordance with these Regulations; or
- (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

¹⁹ The description should enable the areas to be adequately and readily identified by map if the applicant so desires or by any other convenient means.

- (i) ensuring continuity of supply for all such relevant consumers; and
 - (ii) in the case of each such consumer who is supplied with electricity in pursuance of a contract (which does not include any contract which, by virtue of paragraph 3 of Schedule 6 to the Act, is deemed to have been made), securing such continuity on the same terms as nearly as may be as the terms of the contract.
- (c) For the purposes of sub-paragraph (b), a person is a relevant consumer if –
- (i) immediately before the restriction takes effect, he is being supplied with electricity by the holder of the licence; and
 - (ii) his premises are to be excluded from the licence by the restriction.

PART V

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF AN INTERCONNECTOR LICENCE

1. An application in respect of an interconnector licence must specify the actual or proposed point of connection to a electricity transmission or electricity distribution network. Where the applicant is unable to specify a point of connection the applicant should provide Ordnance Survey Grid Reference co-ordinates for the proposed point of connection.

2. In relation to an application in respect of an interconnector that was not completed by 15 July 2003, the applicant may seek to have the following standard licence conditions relating to-

- (a) the licensee's regulated revenue entitlement;
- (b) use of revenues;
- (c) charging methodology to apply to third party access to the licensee's interconnector; and
- (d) requirement to offer terms to an applicant for access to the licensee's interconnector

not to be in effect in the interconnector licence to which this application relates.

3. Where the applicant so seeks for any or all of the licence conditions relating to the matters referred to in paragraphs 2(a), 2(b), 2(c) and 2(d) above not to be in effect, the following additional information must be provided in respect of those licence conditions -

- (a) the period of time for which the applicant requests that the licence condition or conditions not be in effect;
- (b) a statement setting out the evidence and reasoning as to why the applicant considers -
 - (i) the investment in the interconnector enhances competition in electricity supply;
 - (ii) the level of risk attached to the investment to be made in relation to the interconnector is such that the investment would not take place unless those licence conditions were not in effect;
 - (iii) that, should the licence conditions not be in effect for the period of time sought, this will not be to the detriment of competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is linked; and
- (c) a further statement that -
 - (i) the interconnector will be owned by a natural or legal person who is separate, at least in terms of legal form, from the system operators in whose systems the interconnector to which this application relates will be built;
 - (ii) charges will be levied on users of the interconnector; and
 - (iii) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges

made for the use of transmission or distribution systems linked by the interconnector.

SCHEDULE 3

Regulation 7

APPLICATION FEES

COLUMN 1	COLUMN 2
<i>Description of application</i>	<i>Fee payable, £</i>
<i>Generation</i> 1. Application for licence	450
<i>Transmission</i> 2. Application for licence	450
3. Application for modification of an area	225
<i>Distribution</i> 4. Application for licence to distribute electricity within a specified area	1250
5. Application for extension or restriction	125
<i>Supply</i> 6. Application for licence (not including authorisation to supply electricity to domestic premises)	450
7. Application for licence including authorisation to supply electricity to domestic premises	1150
8. Application for extension of a licence so as to include authorisation to supply electricity to domestic premises	1000
9. Application for any other extension or restriction	400
<i>Interconnector</i> 10. Application for a interconnector licence	950

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the information, and other documents that are required to be submitted with applications for electricity generation, interconnection, transmission, distribution and supply licences (and for modifications of an area of transmission licences, and extensions, or restrictions of supply and distribution licences) under the Electricity Act 1989, as amended by the Utilities Act 2000 and the Energy Act 2004. They specify the form and manner of such applications. These Regulations also set out the manner in which applications are to be published.

These Regulations come into force on [INSERT]. Regulation 1 provides for the citation, commencement, transitional and savings provisions, and Regulation 3 provides for general interpretation.

Regulation 4 deals with the manner of applications.

Regulation 5 concerns the form of applications, and incorporates Schedule 1 that specifies their form, and the information and documents to accompany them.

Regulation 6 specifies the additional information and documents to accompany applications. It incorporates Schedule 2, which covers, respectively, applications for:

- generation licences, at Part I;
- transmission licences, at Part II;
- distribution licences, at Part III;
- supply licences, at Part IV; and
- interconnector licences at Part V.

Regulation 7 incorporates Schedule 3, which specifies the fees payable in respect of applications.

Regulation 8 provides for the notice period and publication requirements for applications. It requires applicants to ensure notice of the application is published either on the Ofgem website or their own website. If the application is for a restriction (including a modification of an area of a transmission licence to restrict that area) the applicant must also publish the notice in local newspapers.