



Supply, shipper and generation licensees,
Any other interested parties

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Dear Colleague,

Open letter: Review of policy on licence revocation

Purpose of this letter

The purpose of this letter is to inform you that we are reviewing our current policy on licence revocations and to set out our proposals. Briefly, our proposals are to identify and revoke competitive gas and electricity¹ licences held by licensees that:

- are insolvent ²("insolvent licensees"),
- **have not commenced the licensable activity** for which they are licensed within the time specified in the licence, or
- **have ceased the licensable activity** for which they are licensed.

This letter invites comments on this proposed revised policy and the proposed administrative exercise that may follow as a result.

Background

A licence may be revoked by Ofgem in accordance with any term contained in Schedule 2 of that licence ("the revocation conditions"). The revocation conditions set out the circumstances in which we may, by giving not less than 30 days' written notice to a licensee, revoke its licence³. A copy of the revocation conditions for each licence type is attached at appendix 1.

¹ Excludes licences held by gas or electricity network operators.

² Within the meaning of conditions set out in Schedule 2 of the relevant licence.

³ 24 hours notice where paragraph 1(f) of schedule 2 of the licences applies.

It should be noted however, that where grounds for the revocation of a licence exist, Ofgem has a discretion as to whether to enforce the revocation conditions and revoke that licence.

In summary, amongst other grounds of revocation Ofgem may⁴ revoke a licence where a licensee has:

- ceased carrying on its business in respect of the activity for which it holds a licence (for a period of 3 years for gas supplier licences and 5 years for electricity supply licences, but no time period is specified for electricity generation or gas shipper licences), or
- not commenced business in respect of the activity for which it is licensed within a period of 3 or 5 years from the date on which the licence took effect.⁵

The time limitations of 3 or 5 years are collectively referred to as the "Specified Time" in the remainder of this letter.

In the case of insolvent licensees, Ofgem may revoke a licence on giving not less than 24 hours written notice⁶.

Current policy

We have, where a licensee has requested in writing that its licence be revoked because it is not being used and where we agree with the licensee that the licence should be revoked, always revoked that licence⁷.

Also, where a licensed supplier has become insolvent and subject to the Supplier of Last Resort (SoLR) process⁸, we have always revoked that licence as part of the SoLR process⁹.

However, we have not routinely revoked licences in any other circumstances.

Review of current policy

In recent months we have received representations from interested parties asking us to review our current policy on licence revocations. Specifically, in circumstances where the relevant licence is not being used or where the licensee has become insolvent, they consider it inappropriate for such licensees to continue to hold the relevant licence.

We consider a review of our current policy in respect of licence revocations in such circumstances to be appropriate and due.

We are aware that some licensees have ceased¹⁰ licensable activities or not commenced relevant licensable activities within the Specified Time. We are also aware that some

⁴ In accordance with paragraph 1(e) of the revocation conditions.

⁵ Within 3 years of licence grant in the case of gas licences and within 5 years of licence grant in the case of electricity licences.

⁶ Pursuant to paragraph 1(f) of the revocation conditions.

⁷ In accordance with paragraph 1(a) of schedule 2 of the licence.

⁸ Ofgem recognises that in principle a trade sale would be preferable to appointment of SoLR.

⁹ The appointment of a SoLR requires, as a first step, the revocation of the relevant licence.

¹⁰ For longer than the Specified Time in the case of gas and electricity supply licences.

insolvent licensees still hold the relevant licences. The existence of such surplus licences, is for administrative purposes, amongst other things not generally desirable.

Accordingly, subject to due consideration of all relevant factors in any given case including but not limited to any representations made by the licensee or its insolvency practitioner before the service of a revocation notice and our statutory duties (“the Relevant Factors”), we propose that revocation of such surplus licences would be appropriate.

Ability to exercise our functions

We have in the past exercised our discretion to not revoke a licence because there were outstanding issues in relation to a licensee’s compliance with its licence or other obligations, and where revoking that licence may have hampered our ability to address and take effective enforcement action in respect of such issues. For example, with regard to Renewables Obligations, we will not normally revoke a licence where revocation may impede our function of administering the scheme in respect of that licensee.

It should be noted that we do not propose to alter our policy in this regard.

What we propose to do

Subject to the outcome of this review and without fettering our discretion to enforce the revocation conditions, we intend to write to all licensees¹¹ seeking confirmation as to whether they have:

- ceased carrying out the relevant licensable activity, or
- commenced or when they intend to commence the relevant licensable activity.

Where responses indicate that a licensee has not commenced the relevant licensable activity within the Specified Time or has ceased carrying out the licensable activity¹², we consider that, subject to the Relevant Factors, it would be appropriate for that licence to be revoked. We would therefore revoke the licence by giving 30 days written notice and would also publish the reasons for our decision on the Ofgem website¹³.

Where responses indicate that a licensee:

- has not commenced licensable activities and the time since the licence came into force is within a year of the end of the Specified Time, or
- has ceased carrying out the licensable activity (for a period that is less than a year away from the Specified Time in the case of gas and electricity supply licences)¹⁴

we would seek clarification from the licensee about when it intends to commence licensable activities. Where it is clear that the licensee will not be commencing licensable activities within the Specified Time, we would encourage such licensees to provide written

¹¹ Save those that we are aware of as being obviously active or those whose licences were only granted this year.

¹² For a period in excess of the Specified time in the case of gas and electricity supply licences.

¹³ In accordance with s38A of the Gas Act 1986 or s49A of the Electricity Act 1989.

¹⁴ i.e. a gas supply licensee that has ceased supplying for a period of more than 2 but less than 3 years, or an electricity supply licensee that has ceased supplying for a period of more than 4 but less than 5 years.

consent for the licence to be revoked¹⁵. Where written consent is received, we would revoke the licence by giving 30 days written notice and will publish the reasons for our decision on the Ofgem website.

Where no response is received from a licensee we would be minded to make an information request under the relevant licence¹⁶.

We also intend to write to the insolvency practitioners of existing insolvent licensees to advise that, subject to consideration of the Relevant Factors, we consider it appropriate for the relevant licence to be revoked. We would therefore revoke the licence¹⁷ by giving not less than 24 hours written notice¹⁸ and would also publish the reasons for our decision on the Ofgem website.

The proposed exercise will for administrative purposes, be split into two stages:

Stage 1 – all supply licences and all insolvent licences, and
Stage 2 - gas shipper and electricity generation licences

For the avoidance of doubt, we will continue to revoke a licence where a licensee submits a written request and where we agree with the licensee that the licence should be revoked.

Comments welcome

Any licensees or interested parties wishing to make comments on this proposed policy and exercise should write to Ikbal Hussain by no later than 8 January 2007.

Responses should, wherever possible, be in electronic format and sent by email to Ikbal.hussain@ofgem.gov.uk. Should you have any queries please contact Ikbal Hussain by email or by telephone on: 020 7901 7049.

Yours faithfully,



Michael Knowles
Head of Licensing

¹⁵ Under paragraph 1(a) of the revocation conditions a licence may be revoked where the licensee agrees in writing with the Authority that the licence should be revoked.

¹⁶ SLC 19 of gas supply licence, SLC 10 of gas shipper licence, SLC 19 electricity supply licence and SLC 13 of electricity generation licence.

¹⁷ In accordance with paragraph 1(f) of the revocation conditions.

¹⁸ Notice for revocation is 30 days unless paragraph 1(f) of schedule 2 of the licence applies in which case a licence may be revoked giving 24 hours notice.