



Supply, shipper and generation licensees.  
Any other interested parties.

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27 February 2007

Dear Colleague,

### **Decision letter - review of policy on licence revocations**

On 24 November 2006 we published an open letter<sup>1</sup> indicating that we were reviewing our current policy on licence revocations and to set out details of our proposed new policy. That letter also set out our proposals to carry out an exercise to identify and revoke unused competitive gas and electricity licences<sup>2</sup> held by licensees that:

- are insolvent<sup>3</sup> ("insolvent licensees"),
- **have not commenced the relevant licensable activity** within the time specified in the licence ("the Specified Time")<sup>4</sup>, or
- have ceased to carry on business in respect of the relevant licensable activity for the Specified Time,

and invited responses to our proposed new policy and the said exercise.

A copy of the revocation conditions for each type of licence is attached at appendix 1. This letter reports on the views of respondents and sets out our views and the reasons for them.

### **Respondents' views**

We received nine responses to the consultation: seven from existing licensees and two from other interested parties. The majority of respondents agreed with our general aim to revoke licences that were not being used or were held by insolvent licensees.

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<sup>1</sup> Open Letter: Review of policy on licence revocations. 24 November 2006.  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/17757\\_revocation\\_letter2.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/licensing/licensingrevocations](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/17757_revocation_letter2.pdf?wtfrom=/ofgem/work/index.jsp&section=/areasofwork/licensing/licensingrevocations)

<sup>2</sup> Excludes licences held by gas or electricity network operators

Within the meaning of conditions set out in paragraph 1(f)(i)-(v), 2 and 3 of schedule 2 of the relevant licences. All references in this letter to "insolvent licensees" are to licensees who are subject to one or more of those criteria.

<sup>4</sup> The Specified Time is the time limitation of 3 years for gas licences or 5 years for electricity licences as specified in paragraph 1(e)(i) and/or (ii) of the revocation conditions

Scottish and Southern Energy (SSE) stressed the importance of Ofgem considering the particular reasons for a licensee not having commenced or having ceased a licensable activity.

energywatch expressed broad support for our proposals but raised a number of issues relating to our policy on the granting of licences. We intend to shortly consult on proposed revisions to the licence applications regulations<sup>5</sup> and associated guidance, and consider the issues raised in this regard by energywatch to be more suitably addressed in that consultation.

E.on UK and Distrigas had concerns about what they perceived to be the 'automatic' nature of our proposed revised policy in relation to licences that have not been used within the specified time. Both companies raised concerns about licences being automatically revoked in such circumstances and stated that a licensee may have good operational or market condition reasons for not having commenced licensable activities. They also raised concerns about the additional cost and resources implications of having to exit associated codes and agreements and possibly then re-apply for new licences (and again have to become a party to relevant codes and agreements) in the future.

E.on UK also stated that the process for withdrawing from relevant industry codes and agreements, particularly the UNC, needs to be reviewed and simplified as this is a "... significant barrier to actually removing unwanted licences". E.on UK suggested that, where a licensee agrees to the revocation of their licence, Ofgem could facilitate the process by "...revoking the licence together with withdrawing the licensee from all the relevant Industry Codes and agreements." Where this is not practicable it considered that ".....revocation should trigger a communication to the relevant industry bodies to ensure that the withdrawal process from Industry Codes and Agreements is completed."

Phoenix Natural Gas Limited ("PNG") and Distrigas both raised concerns about the possible impact on gas shipper licensees that have not thus far made arrangements with a gas transporter to ship gas but nonetheless require a gas shipper licence<sup>6</sup> in order to trade gas at the National Balancing Point ("NBP"). PNG also stressed the importance of continued access to the Gemini system<sup>7</sup> to its business operations.

#### *Insolvent licensees*

Wales and West Utilities Limited ("WWUL") stated that it did not agree with our proposed policy in respect of insolvent licensees and suggested that a more pro-active approach should be taken by Ofgem. WWUL suggested that it would be unlawful to have a policy which rules out exercising our functions in accordance with the terms of the Gas Act 1986 and the licence and that our discretionary power to revoke the licence of an insolvent licensee must be exercised in accordance with our statutory duties and proportionality (to comply with the Human Rights Act).

WWUL also stated that one of the available grounds of revocation is that a licensee is "unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986 ("the Act"))" subject to the proviso as to the [much higher] monetary threshold<sup>8</sup> in the licence. WWUL considered this aspect of the test does not necessarily require the licensee to have formally taken an insolvency step hence it is open for Ofgem to determine that under section 123 of the Act a company has failed the statutory

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<sup>5</sup> Gas and Electricity Application Regulations 2004, SI no 2983 and 2952.

<sup>6</sup> The Uniform Network Code requires a user to be a licensed gas shipper.

<sup>7</sup> Gemini is part of an integrated set of computer systems managed by Xoserve and known as the UK Link system which is used, among other things, to balance the transportation system and register gas trades.

<sup>8</sup> The licences specifies the threshold to be £100,000.

insolvency test and therefore should have its licence revoked. WWUL considered that this would allow us to invoke the Supplier of Last Resort ("SoLR") regime, for the benefit of customers.

WWUL considered such a policy would provide the relevant stimulus to the failing company and its insolvency practitioner to act promptly to find a commercial solution/sale and thereby mitigate the effect of the company's failure on the industry and consumers at large. WWUL stated that in the absence of this policy, the failing company will know that it can do as it pleases for its own benefit without reference to the wider industry and that as a matter of policy Ofgem should leave an option open to itself, to revoke the relevant licence.

We also received a response from xoserve on behalf of Energy Balancing Credit Committee ("EBCC") who asked for clarification on what form the review would take and whether we intended to set up steering or working groups.

## **Ofgem's views**

### *Unused licenses and cessation of licensable activity*

As we stated in our November 2006 open letter,<sup>9</sup> the revocation of unused licences and those held by insolvent licensees would be 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.

For clarity, where a licensee has ceased or not commenced licensable activities within the Specified Time (if any), we have not proposed and do not propose to 'automatically' revoke that licence. Rather, we propose to look at each potential licence revocation on a case by case basis, and in accordance with our principal objective and general statutory duties. We will ordinarily provide the licensee with a reasonable opportunity to make representations, take into account any representations received and consider any other relevant factors ("Relevant Factors")<sup>9</sup>. For example, in the case of a gas shipper licensee, where the licensee is not directly engaged in gas shipping activities but is actively involved in gas trading and hence requires a shipper licence in order to trade gas.

However, where no representations are received or where a licensee's response provides no clear indication that it intends or is likely to use the licence in the foreseeable future, in the absence of any other Relevant Factors warranting the continuation of the licence, we consider that it would generally be appropriate to revoke such a licence.

Ofgem is neither a party to nor is it responsible for the day to day operation of the relevant industry codes and agreements. Accordingly, we do not consider it to be possible or appropriate for Ofgem to manage the process of a licensee withdrawing from any industry codes and agreements to which it is a party.

We note E.on UK's comments about the need for a review of the process for withdrawing from industry codes and agreements. However, for the reasons set out above, we also consider that any issues relating to the need for a review of the process for withdrawing from these arrangements ought to be raised with the relevant code parties and supervisory panels. It would be for E.on UK (or any other code party) to utilise the relevant code change mechanism to raise and address any such issues that exist.

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<sup>9</sup> All factors that are relevant to a particular case – including but not limited to our statutory duties and any representations made by the licensee or its insolvency practitioner.

We agree with E.on UK's comments that the revocation of a licence should trigger a communication to relevant industry bodies to ensure that the withdrawal process from industry codes and agreements is initiated. Accordingly, where we intend to revoke a licence we will send an email notification to the relevant industry body so that it may, in conjunction with the company whose licence is to be revoked, make the appropriate arrangements for its withdrawal.

### *Insolvent licensees*

We do not fully agree with WWUL's analysis and some of the particular points it has made. We address those matters below.

We are acutely aware of the need to exercise our powers - including the power to revoke licences where the revocation conditions are satisfied - in accordance with the terms of the relevant licence, our principal objective and general statutory duties under the primary legislation and any applicable EC or public law.

WWUL did not refer to any particular provision of the Human Rights Act in this context. However, we note that the European Court of Human Rights has held that the withdrawal of a licence, if the conditions of the licence are no longer fulfilled or its withdrawal is in accordance with the applicable law in force, would not normally attract the protection of the Convention<sup>10</sup>.

Even if Article 1 was engaged, we believe that our proposed new policy, and the 'case by case' approach set out above, would be in accordance with it and general public law principles of fairness and acting rationally.

With reference to sections 123(1)(a) and (2) of the Act – the licensee is “unable to pay its debts” – our view is that it will generally require a formal determination of insolvency for the relevant revocation condition to be triggered. For example, a creditor of the licensee may have taken the formal step of serving a statutory demand on the company pursuant to section 123 of the Act in respect of an unpaid debt and the company would have to have failed to comply with it, or to dispute it, within 21 days of service. In this regard, paragraph 3 of the revocation conditions provide that the licensee shall not be deemed to be unable to pay its debts if a statutory demand is contested in good faith by the licensee.

However, in view of the higher - £100,000 - threshold under the revocation conditions referred to above, those steps would not in themselves necessarily be sufficient to trigger our right to revoke the licence on this ground. We may well have to await the outcome of any subsequent petition to wind-up the company.

For all types of licences we therefore consider it appropriate to follow our existing policy<sup>11</sup> in respect of SoLR and wait until a formal determination<sup>12</sup> of insolvency as set out in the revocation conditions before deciding whether to revoke a licence.

We do not consider it appropriate to set up a working or steering group in respect of this review as the process of contacting relevant licensees is essentially an administrative exercise and revoking a licence (where appropriate) is a discretionary Ofgem power. Furthermore, the situation in cases of insolvency can change quite quickly and it may not be practical to convene working or steering group meetings on such occasions. The

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<sup>10</sup> That is, Article 1 of the First Protocol of the European Convention on Human Rights (“Article 1”)

<sup>11</sup> Supplier of Last Resort. Revised Guidance. November 2003.

<sup>12</sup> This would include a court decision, appointment of a receiver, or if a resolution for winding-up is passed by the company.

infrequent nature of such situations also reduces the benefit of having a standing working or steering group.

## **Conclusions**

After careful consideration of all responses received we consider it appropriate, as set out in our November 2006 open letter, to modify our policy in accordance with our proposals and carry out the exercise to identify unused licences and those held by insolvent licensees outlined in that letter and, where appropriate, revoke the relevant licences.

As proposed, we will split the exercise into two more manageable stages.

Stage 1 – relevant<sup>13</sup> supply licences and licences held by insolvent licensees, and  
Stage 2 – gas shipper and electricity generation licences.

We intend to contact shipper and generation licensees in the same manner as above after this first stage is completed, which at this time, we anticipate will be in early June 2007.

## **Summary of revised policy.**

Going forward we will, subject to consideration of all Relevant Factors to which we have referred and without fettering our discretion as to whether to enforce the revocation conditions, revoke a licence where the licensee:

- is insolvent (as defined in the revocation conditions), or
- has not commenced or has ceased licensable activities for the Specified Time.

This is without prejudice to our powers to revoke a licence in other circumstances<sup>14</sup>.

For the avoidance of doubt we will, subject to consideration of all Relevant Factors, continue to revoke a licence where a licensee has requested its revocation.

Yours faithfully,



Michael Knowles  
**Head of Licensing**

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<sup>13</sup> Gas supply licences granted more than 2 years ago and electricity supply licences granted more than 4 years ago.

<sup>14</sup> As set out in paragraph 1(b) (non payment of amounts due under standard condition 4(Payments by the Licensee to the Authority)), 1(c) (failure to comply with final order or pay financial penalty) and 1(d) (failure to comply with a court order under section 34 of the Competition Act 1998) of the revocation conditions

## GAS SUPPLIER LICENCE

### REVOCATION

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:
  - (a) if the licensee agrees in writing with the Authority that the licence should be revoked;
  - (b) if any amount payable under standard condition 4 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c) if the licensee fails:
    - (i) to comply with a final order (within the meaning of section 28 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
    - (ii) to pay any financial penalty (within the meaning of section 30A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
  - (d) if the licensee fails to comply with an order made by the court under section 34 of the Competition Act 1998;
  - (e) if the licensee:
    - (i) has not within 3 years after the date on which this licence comes into force, commenced the supply of gas to any premises within the specified area in Schedule 1 to the licence; or

- (ii) has ceased to supply gas to all of those premises within the specified area in Schedule 1 for a period of 3 years;
  
  - (f) if the licensee:
    - (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
    - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
    - (iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
    - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
    - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
  
  - (g) if the licensee is convicted of having committed an offence under section 43 of the Act in making its application for the licence.
2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.
  3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.

## **ELECTRICITY SUPPLY LICENCE**

### **REVOCATION**

The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:

- (a) if the licensee agrees in writing with the Authority that the licence should be revoked;
- (b) if any amount payable under standard condition 4 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
- (c) if the licensee fails:
  - (i) to comply with a final order (within the meaning of section 25 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
  - (ii) to pay any financial penalty (within the meaning of section 27A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
- (d) if the licensee fails to comply with an order made by the court under section 34 of the Competition Act 1998;
- (e) if the licensee:
  - (i) has not within 5 years after the date on which this licence comes into force, commenced the supply of electricity to any premises within the specified area in Schedule 1 to the licence; or

- (ii) has ceased to supply electricity to all of those premises within the specified area in Schedule 1 for a period of 5 years;
  
  - (f) if the licensee:
    - (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
    - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
    - (iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
    - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
    - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
  
  - (g) if the licensee is convicted of having committed an offence under section 59 of the Act in making its application for the licence.
2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.
  
  3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.

## **GAS SHIPPER LICENCE**

### **REVOCAION**

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:
  - (a) if the licensee agrees in writing with the Authority that the licence should be revoked;
  - (b) if any amount payable under standard condition 2 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c) if the licensee fails:
    - (i) to comply with a final order (within the meaning of section 28 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
    - (ii) to pay any financial penalty (within the meaning of section 30A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 30E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
  - (d) if the licensee fails to comply with an order made by the court under section 34 of the Competition Act 1998;
  - (e) if the licensee:
    - (i) ceases to carry on its business as a gas shipper; or
    - (ii) shall not have commenced business as a gas shipper within a period of 3 years from the date on which the licence takes effect;

- (f) if the licensee:
    - (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
    - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
    - (iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
    - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
    - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
  - (g) if the licensee is convicted of having committed an offence under section 43 of the Act in making its application for the licence.
2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.
  3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.

## **ELECTRICITY GENERATION LICENCE**

### **REVOCATION**

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:
  - (a) if the licensee agrees in writing with the Authority that the licence should be revoked;
  - (b) if any amount payable under standard condition 4 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c) if the licensee fails:
    - (i) to comply with a final order (within the meaning of section 25 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
    - (ii) to pay any financial penalty (within the meaning of section 27A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
  - (d) if the licensee fails to comply with an order made by the court under section 34 of the Competition Act 1998;
  - (e) if the licensee:
    - (i) has ceased to carry on the generation business;
    - (ii) has not commenced carrying on the generation business within 5 years of the date on which the licence comes into force;

- (f) if the licensee:
  - (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
  - (iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
  - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
  - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
- (g) if the licensee is convicted of having committed an offence under section 59 of the Act in making its application for the licence.

2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.
3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.