

## Gas and electricity licence applications - Draft Guidance Document

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**Target audience:** Gas and electricity licensees, potential new entrants, consumer groups and any other interested parties

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### Overview:

This document sets out proposed revised procedures that we intend to follow when assessing applications for all types of gas and electricity licences. It also explains the process that follows a proposal by us not to grant a licence.

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## Context

An EC Directive<sup>1</sup> requires the publication of objective and non-discriminatory criteria and procedures for assessing gas licence applications. Since 2002 we have published such guidance which applies to both gas and electricity licence applications.

In light of the changes made as part of the Supply Licence Review a number of changes have had to be made to our licensing process. We have also made some changes to reduce the administrative burdens on applicants. Additionally, to protect the interests of consumers and market participants we have clarified the checks we will make and factors that we will take into consideration in respect of applicants who are insolvent and in situations where "phoenix companies" are using a prohibited name.

## Associated Documents

- Supply Licence Review - Initial Policy Proposals. July 2006. Ref: 113/06.
- Supply Licence Review - Further Proposals. December 2006. Ref: 217/06.
- Distribution and transportation codes of practice. Guidance notes. October 2001. Ref: 60/01.
- Electricity and gas interconnector licences - Guidance document. April 2005.
- Gas and electricity licence applications. Guidance document. March 2005. Ref 86/05.

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<sup>1</sup> Directive 2003/55/EC - Concerning Common Rules for the Internal Market in Natural Gas  
[http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_176/l\\_17620030715en00570078.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_176/l_17620030715en00570078.pdf).

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## Summary

This document is a draft of the Guidance Document we intend to publish to replace our current guidance for licence applicants<sup>2</sup>. It sets out the proposed revised procedures that we intend to follow when assessing applications for all types of gas and electricity licences. It also explains the process that follows a proposal by us not to grant a licence.

It should be noted that this guidance is in the form it will take should all the proposed changes as set out in the main consultation document be made. Should any of the proposed changes not be made then this guidance will be updated accordingly.

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<sup>2</sup> Gas and electricity licence applications. Guidance Document. March 2005. Ref: 86/05  
<http://www.ofgem.gov.uk/LICENSING/WORK/Documents1/10070-8605.pdf>

## 1. Introduction

### Structure of this document

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

- Chapter 2 - General procedures for assessing licence applications
- Chapter 3 - Supply licences
- Chapter 4 - Gas transporter, electricity distribution and transmission licences
- Chapter 5 - Interconnector licences, and
- Chapter 6 - Refusals and appeals procedure.

### Legal framework

#### The Gas Act 1986 and the Electricity Act 1989

1.2. The principal objective of the Gas and Electricity Markets Authority ("the Authority") in carrying out its functions is, in summary, to protect the interests of consumers, wherever appropriate by promoting effective competition<sup>3</sup>. The Authority must carry out its functions in the manner it considers is best calculated to further that principal objective having regard to a number of general statutory duties, including:

- the need to secure that licensees can finance their activities which are the subject of obligations under the Utilities Act 2000 or, as the case may be, the Gas Act 1986 or the Electricity Act 1989
- the need to secure that, so far as it is economical to meet them, that all reasonable demands for gas and electricity are met, and
- in performing those duties, the needs to have regard to the interests of particular customer groups such as the disabled or chronically sick.

1.3. The Gas 1986 and the Electricity Act 1989 (together "the Acts") make it an offence to carry out certain activities unless licensed or exempt from the requirement for a licence<sup>4</sup>. We can grant licences<sup>5</sup> for the following activities:

- Supply licences - gas or electricity
- Network licences - gas transportation, electricity distribution and transmission
- Interconnector licences - gas or electricity
- Other licences - gas shipper and electricity generation

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<sup>3</sup> Gas Act 1986 s4AA and Electricity Act 1989 s3A

<sup>4</sup> Gas Act 1986 s5 and Electricity Act 1989 s4

<sup>5</sup> Gas Act 1986 s7& s7A and Electricity Act 1989 s6

1.4. The Gas and Electricity Acts also make it an offence for any person, in giving any information or making any application under part 1 of the Acts, to make any statement which is known to be false in a material particular, or to recklessly make any statement which is false in a material particular<sup>6</sup>.

### **The Application Regulations**

1.5. The Application Regulations<sup>7</sup> state the manner and form in which applications for gas and electricity licences must be made, the information they must contain, and the application fees. They apply to applications for:

- a licence,
- an extension of a licence, or
- a restriction of a licence

1.6. The Electricity Application Regulations also apply to applications for a modification of an area of a transmission licence. Modification of an area of a transmission licence is explained in more detail in Appendix 1.

### **Overall policy**

1.7. The criteria in this document are the minimum criteria that have to be met by an applicant for a licence. These take into account:

- our duty to protect consumers, wherever possible by promoting effective competition
- the fact that various industry codes and agreements set out in detail the industry processes to which a licensee must adhere, and
- our aim of minimising regulatory burden and maximising the opportunity for new firms to enter the market.

1.8. We recognise the need to encourage innovation and the fact that the structure of applicants' businesses will differ. The criteria therefore do not set out prescriptive standards which must be met, but indicate to applicants the nature of information that they are expected to supply and the manner in which this information will be assessed.

1.9. To make it easier for potential applicants to understand the licensing regime, we can arrange for joint presentations (with MRASCO<sup>8</sup> and Elexon) to potential entrants to the electricity market.

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<sup>6</sup> Gas Act 1986 s43 and Electricity Act 1989 s59

<sup>7</sup> Proposed new Applications Regulations - these may be viewed at appendix 2 to the main consultation document.

1.10. Application Handbooks to guide applicants through the licensing process are also available on our website.

### **Compliance with licence conditions**

1.11. Applicants must ensure that they have systems and procedures in place that will enable them to comply with all the conditions of the licence if it is granted. We would expect new licensees to comply fully with the provisions of the licence from the date it has been granted. Failure to comply with a condition of a licence may result in formal enforcement action by Ofgem.

1.12. Applicants for gas transporter and electricity distribution licences must, in addition, provide information about how they will comply with the applicable requirements of a number of specified Standard Licence Conditions (SLCs) - See chapter 4 for further details.

### **Future reviews**

#### **Offshore wind and network licences**

1.13. Ofgem/DTI has published a joint consultation<sup>9</sup> on the appropriate regime for licensing offshore activities.

1.14. No significant changes have been made to our procedures for assessing applications for Network Licences<sup>10</sup> at this time. However, we intend to review this over the coming year

1.15. Further changes may be necessary to this document when the regime for licensing offshore activities comes into effect (expected in 2008) and following further consideration of our procedures for assessing Network Licence applications. We will also review our application fees at the next review to ensure that they continue to be cost reflective

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<sup>8</sup> MRASCo is the company established by signatories to the MRA to be responsible for managing the day to day operation of the MRA. On 1 September 2002 MRASCo's personnel and operational assets transferred to Gemserv.

<sup>9</sup> Licensing Offshore Electricity Transmission - a joint Ofgem / DTI consultation. Ofgem 199/06 [http://www.ofgem.gov.uk/Networks/Trans/Offshore/ConsultationDecisionsResponses/Documents1/16175-199\\_06.pdf](http://www.ofgem.gov.uk/Networks/Trans/Offshore/ConsultationDecisionsResponses/Documents1/16175-199_06.pdf).

<sup>10</sup> Electricity Distribution and Gas Transporter licence applications

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## 2. Assessing licence applications

→ This chapter describes the general procedures that we intend to follow when assessing licence applications.

### Provision of information

2.1. The Application Regulations set out the information required to make a licence application and the manner and form in which it must be provided. The tables below illustrate the applicable parts of the Application Regulations and specifies the relevant sections of this document that should be referred to for further information and details of any specific criteria for a particular licence type.

#### Gas licences

Licence type	Applicable parts of the Application Regulations and guidance		
	General criteria (regs) Schedule 1	Schedule 2	Specific criteria
Supply	<ul style="list-style-type: none"> <li>▪ General Particulars</li> <li>▪ Details of Application</li> <li>▪ Criminal Offences</li> </ul>	Part 1	none
Shipper		Part 2	none
Transporter		Part 3	<ul style="list-style-type: none"> <li>▪ Codes of practice</li> </ul> See pages 19-21
Interconnector		Part 4	<ul style="list-style-type: none"> <li>▪ Additional specific guidance</li> </ul> See page 25

#### Electricity licences

Licence type	Applicable parts of the Application Regulations and guidance		
	General criteria (regs) Schedule 1	Schedule 2	specific criteria
Supply	<ul style="list-style-type: none"> <li>▪ General Particulars</li> <li>▪ Details of Application</li> <li>▪ Criminal Offences</li> </ul>	Part 4	none
Generation		Part 1	none
Distribution		Part 3	<ul style="list-style-type: none"> <li>▪ BA4 (Undertaking from Ultimate Controller) and BA5 (Credit Rating of Licensee)</li> <li>▪ SLC 6</li> <li>▪ Codes of practice</li> </ul> See pages 21-23
Transmission		Part 2	<ul style="list-style-type: none"> <li>▪ Further information</li> </ul> See pages 23-24
Interconnector		Part 5	<ul style="list-style-type: none"> <li>▪ Additional specific guidance</li> </ul> See page 25

2.2. In order to assess applications more efficiently, other than in exceptional circumstances (such as an urgent request for a temporary licence), we will not start to assess an application unless all the information required by the Application Regulations has been provided. In cases where insufficient information has been provided we will explain what more is required.

2.3. We are aware that in some cases where we request information or clarification, some applicants take a considerable time to respond which can lead to delays in processing applications. Where further information or clarification is required we will agree timescales with individual applicants. Failure to meet these agreed timescales may lead to a refusal to grant a licence (although the applicant would be able to appeal against such a decision – see Chapter 6).

### Application fees

<b>Application type</b>	<b>Application fee</b>
Electricity generation	£500
Electricity transmission	£500
Electricity transmission – modification of area	£250
Electricity distribution	£1400
Electricity distribution – extension or restriction	£150
Electricity supply – domestic	£450
Electricity supply – non domestic	£450
Electricity supply extension	£450
Electricity interconnector	£1050
Gas supply – domestic	£450
Gas supply – non domestic	£450
Gas supply – (conveyed other than by gas transporter)	£350
Gas supply – extension	£450
Gas shipper	£350
Gas transporter	£1050
Gas transporter – extension or restriction	£150
Gas interconnector	£1050

2.4. We intend to further review the application fees in 2008 to ensure that they continue to be cost reflective.

### **Notice of application**

2.5. All applicants<sup>11</sup> are required to make arrangements for a 28 calendar day notice of application<sup>12</sup> to be published on either our website or on their own website within 10 days of receiving acknowledgement from us of a duly made application. Where an applicant decides to publish a notice on its own website, the applicant must provide us with an URL link to that notice.

2.6. In addition, applicants for a restriction of a licence must also arrange for a notice to be published in such newspapers as are best calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates.

2.7. In all cases we can provide applicants with templates with suggested wording for the relevant application notice.

### **Time taken to grant licences**

2.8. Our current target is to grant 90% of licence applications within 8 weeks of receipt of a duly made<sup>13</sup> application, including all necessary supporting documentation and information<sup>14</sup>. However, it should be noted that any delay in providing information or responding to requests for clarification may result in a licence taking longer to grant.

### **Licence transfers**

2.9. In considering whether to give consent to a proposed licence transfer we will apply the same criteria that we would apply if we were considering whether to grant a corresponding new licence to the proposed transferee<sup>15</sup>.

2.10. In order for us to apply the same criteria, the proposed transferee must provide the same information in the form and manner set out in the Applications Regulations for the corresponding new licence.

### **Modification of an area, extension and restriction of existing licences**

2.11. Applications for modification of an area (transmission licences only) and extensions or restrictions of licences must satisfy the requirements for information

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<sup>11</sup> Applications for licences, extension or restriction of licences

<sup>12</sup> Applications to transfer a licence are subject to a 2 month notice.

<sup>13</sup> An application that is properly completed in the form and manner specified by the Application Regulations

<sup>14</sup> This applies to "competitive licence" applications i.e. supply, gas shipping and electricity generation. This does not include gas transporter, electricity distribution or interconnector licence applications or licence applications where modifications have been requested

<sup>15</sup> Gas Act 1986 s8AA(6) and Electricity Act 1989 s7A(6)

set out in the Application Regulations. However, information about the applicant's codes of practice<sup>16</sup> need not be submitted where that information would not, in any material respect, significantly differ from or add to the most recent information or documents provided.

2.12. We will use the criteria applicable to all application types and the relevant licence-specific criteria to assess applications for modifications of an area and for extensions and restrictions of licences. In determining an application for a modification, extension or restriction we will, where necessary, request any information which has not been submitted.

## General Criteria

### Criminal convictions

2.13. The Application Regulations require a declaration of unspent<sup>17</sup> criminal convictions relating to:

- the current directors of the applicant, including any shadow directors, or where applicable the corresponding officers of the company
- the parent/ultimate holding company and its directors
- any person who holds 20 per cent or more of any class of the shares of the applicant, and
- if the applicant is neither a body corporate nor a sole trader, the person(s) in whom effective control of the applicant rests

### Disqualified directors

2.14. We will check the Companies House web site<sup>18</sup> and other available sources<sup>19</sup> to ensure that:

- the directors (including shadow directors) of the applicant, or in the case of sole traders the applicant, or, in the case of partnerships, the applicant and his/her partners
- the directors of any parent/ultimate holding company of the applicant
- major shareholders in the applicant, or
- any individuals with a controlling interest in the applicant

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<sup>16</sup> No codes of practice need to be submitted for extensions to supply licences.

<sup>17</sup> "Unspent" under the Rehabilitation of Offenders Act 1974.

<sup>18</sup> <http://www.companieshouse.org.uk>.

<sup>19</sup> Including - The London, Edinburgh and Belfast Gazettes website at <http://www.gazettes-online.co.uk>. The Insolvency Service website at <http://www.insolvency.gov.uk> and the Registry of Judgments, Orders and Fines website at <http://www.registry-trust.org.uk>.

are not disqualified.

### **Insolvency**

2.15. The concept of “insolvency” for the purpose of triggering our discretion to revoke a licence is defined in the revocation conditions<sup>20</sup>. We may revoke a licence on insolvency grounds, on giving not less than 24 hours notice, if the licensee:

- is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to a higher threshold of £100,000 (as opposed to £750 under section 123 of the Insolvency Act 1986)),
- has a receiver appointed,
- has an administration order made in relation to it,
- passes any resolution for its winding-up (unless we had previously approved such resolution), or
- becomes the subject of a winding-up order by a court.

2.16. On the first limb of the first insolvency trigger – the licensee is “unable to pay its debts” – we will wait for a formal determination<sup>21</sup> of insolvency as set out in the revocation conditions before deciding the matter. We cannot unilaterally and definitively determine whether or not a company is “unable to pay its debts” nor would we pre-empt the outcome of any formal insolvency steps by the company or its creditors.

2.17. Accordingly, we will apply the same tests outlined above to any application for a licence. In all cases we will check the Companies House web site and other available sources before granting a licence to ensure that the applicant is not insolvent.

### **Previously refused applications and revoked licences**

2.18. We will check to establish whether the applicant has previously had a licence application refused or held a licence that has been revoked (other than by mutual agreement)<sup>22</sup>. In such cases, the reasons for application refusal or licence revocation will be considered to see if it is relevant to the decision to grant a licence.

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<sup>20</sup> Schedule 2 of the relevant licence paragraph 1(f)

<sup>21</sup> This includes a court decision, appointment of a receiver, or if a resolution for winding-up is passed by the company.

<sup>22</sup> Where the licence was not being used and the licensee has requested revocation of licence and we have agreed to that request.

**Prohibited names<sup>23</sup>**

2.19. We consider it important that consumers and other market participants are protected from any confusion which may arise from the naming of "phoenix" companies<sup>24</sup> in the minority of cases where there is abuse of the phoenix company arrangements.

2.20. Where we suspect that an applicant may be using a prohibited name in breach of the Insolvency Act 1986 we will liaise with the relevant Insolvency Practitioner and, where appropriate, the Insolvency Service.

2.21. We will not grant a licence where there is a court decision<sup>25</sup> that an applicant is using a prohibited name in breach of the Insolvency Act 1986.

**Ability of licence holders to finance their activities**

2.22. In carrying out our functions we must have regard to the need to secure that licensees are able to finance their activities which are the subject of obligations imposed<sup>26</sup>.

2.23. However, we cannot conduct any check<sup>27</sup> on a potential licensee at the time of its licence application that will provide continuing comfort about financial viability once the licensee commences operations.

2.24. Where they exist, entry testing arrangements<sup>28</sup> provide a greater level of protection than any test that we could perform before granting a licence. The Application Regulations do not therefore require applicants to submit financial information or a statement of business proposals.

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<sup>23</sup> For the purposes of this section, a name is a prohibited name in relation to such a person if- (a) it is a name by which the liquidating company was known at any time in that period of 12 months, or (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.' S216(2), the Insolvency Act 1986.

<sup>24</sup> A phoenix company is where the assets of one Limited Company are moved to another legal entity. Often some or all of the directors remain the same and in some cases, the new company has the same or a similar name. The Insolvency Act makes it an offence for a director of a company which has gone into insolvent liquidation to be a director of a company with the same or similar name, or be concerned in its management, without leave of the court within 5 years after winding up or the exceptions set out in section 216 of the Insolvency Act.

<sup>25</sup> Under the Insolvency Act there are certain exceptions on prohibited names and a court can grant leave making the use of a prohibited name lawful.

<sup>26</sup> Gas Act 1986 s4AA(2)(b) and Electricity Act 1989 s3A(2)(b)

<sup>27</sup> Apart from checking with Companies House and other available sources that the applicant is solvent at the time of licence application which can only provide some assurance of the situation at the time of licence application and cannot provide any continuing comfort about future financial viability.

<sup>28</sup> entry testing arrangements under the various industry codes include credit rating, interoperability and disaster recovery.

### **Specific criteria for different licensable activities**

2.25. In addition to demonstrating compliance with the general criteria above, applicants will also need to demonstrate compliance with any specific criteria applicable to the type of licence applied for. These are set out in the following chapters:

- supply licences – chapter 3
- network licences (gas transporter, electricity distribution and transmission) – chapter 4
- interconnector licences – chapter 5

2.26. There are no specific criteria for supply, shipper or electricity generation or applications other than the general criteria that all applicants must satisfy as set out in this chapter.

### 3. Supply licences

- This chapter describes the impact of the supply licence review on the process of applying for a supply licence and our procedures for assessing supply licence applications.
- There are no specific additional criteria for supply licence applications.

#### Supply Licence Review (SLR)

3.1. As a result of the SLR - clear and targeted obligations relating to vulnerable customers have replaced the administrative requirements for a supplier to prepare seven separate detailed codes of practice that must each be approved, complied with, monitored and reported upon.

3.2. Applicants are reminded that they must comply with conditions from the date that a licence is granted, including the new requirements to publish in plain and intelligible language statements setting out their obligations under those licence conditions relating to vulnerable customers<sup>29</sup>.

#### Other supply licence issues

##### Holding of other licences by supply licensees

3.3. We will check the following before granting a supply licence:

- gas supply licence applicants do not hold a gas transporter licence or a gas interconnector licence<sup>30</sup>, and
- electricity supply licence applicants do not hold an electricity distribution licence or an electricity interconnector licence<sup>31</sup>.

##### Premises and area to be supplied

3.4. An applicant may specify the type of premises or the area of the premises to be supplied. We will not grant a licence where, in our opinion, the description or area of the premises to be supplied would artificially exclude premises likely to be owned or

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<sup>29</sup> Draft modified SLC26 (Services for specific Domestic Customer groups), SLC27 (Payments, Security Deposits and Disconnections), and SLC28 (Prepayment meters).

<sup>30</sup> Gas Act 1986 s7(3) and s7A(3)

<sup>31</sup> Electricity Act 1989 s6(2) and s6(2A)



occupied by persons who are chronically sick, disabled or of pensionable age, or who are likely to default in the payment of charges<sup>32</sup>.

### **Extension or Restriction of a supply licence**

3.5. We will apply the same criteria when assessing an application for an extension or restriction of a supply licence as those used to assess an application for a supply licence.

3.6. In addition, because it is important that any restriction does not leave consumers without a supply, we will check that proposals for ensuring continuity of supply are sufficient<sup>33</sup> to:

- notify existing and affected consumers of the effects of any restriction
- secure alternative supply for affected consumers on the same terms as nearly as is possible to the existing contract, and
- ensure that any prospective supplier is licensed.

3.7. We will not grant an extension or restriction where, in our opinion, the description or area of the premises to be supplied would artificially include in the restriction or exclude from the extension, premises likely to be owned or occupied by persons who are chronically sick, disabled or of pensionable age, or who are likely to default in the payment of charges<sup>34</sup>.

### **Gas supply through exempt pipelines**

3.8. We will notify the Health and Safety Executive (HSE) of any application we receive for licences authorising the supply of gas through exempt pipelines<sup>35</sup>. In addition to meeting the general criteria as set out in Chapter 2, we will seek confirmation from that applicant that it has secured approval of, or is in discussions with, the HSE regarding a gas safety case.

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<sup>32</sup> Gas Act 1986 s7A(8) - Although there is no corresponding provision in the Electricity Act 1989. In order to protect customers and in line with our policy to align the gas and electricity markets wherever possible, we have extended this provision to apply to electricity supply licences.

<sup>33</sup> Gas Act 1986 s7A(9) - Although there is no corresponding provision in the Electricity Act 1989. In order to protect customers and in line with our policy to align the gas and electricity markets wherever possible, we have extended this provision to apply to electricity supply licences

<sup>34</sup> Gas Act 1986 s7A(8) - Although there is no corresponding provision in the Electricity Act. In order to protect customers and in line with our policy to align the gas and electricity markets wherever possible, we have extended this provision to apply to electricity supply licences.

<sup>35</sup> Where a gas network is exempt from the requirement to hold a gas transporter licence. For example, caravan parks or Local Authorities that supply gas to premises via their own private network.

**Additional information for gas supply licence applicants**

*SLC 22B (Undertaking to be given by Licensee to a Relevant Transporter in respect of shipping charges etc)*

3.9. Gas supply applicants should note that, once licensed, this condition requires them to contact the relevant transporter in the event that they supply gas to any premises on that transporter's network, with a view to providing a Deed of Undertaking in respect of gas shipper charges.

## 4. Network licences

→ This chapter describes the specific criteria (in addition to the general criteria set out in chapter 2) against which we will assess an application for a gas transporter licence, an electricity distribution or transmission licence.

### General network licence issues

#### Holding of other licences by network licensees

4.1. We will check the following before granting a network licence:

- gas transporter licence applicants do not hold any other type of gas licence<sup>36</sup>,
- electricity distribution licence applicants do not hold an electricity supply licence or an electricity interconnector licence<sup>37</sup>, and
- electricity transmission licence applicants do not hold an electricity interconnector licence<sup>38</sup>.

#### Safe operation of transportation and distribution systems

4.2. We will, where appropriate, consult the Health and Safety Executive (HSE) and DTI Engineering Inspectorate about safety issues contained in information submitted by applicants for gas transportation and electricity distribution licences. We will also consult the HSE about any other safety matters<sup>39</sup>.

4.3. An applicant for an electricity distribution or gas transporter licence is not required to submit information about the safe operation of its proposed system. However, we will take into account any comments made by the HSE or DTI Engineering Inspectorate about whether it considers the system can be operated safely.

#### Extension or Restriction of a network licence

4.4. We will apply the same criteria when assessing an application for an extension or restriction of a network licence as those used to assess an application for a network licence.

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<sup>36</sup> Gas Act 1986 s7(3) and s7A(3)

<sup>37</sup> Electricity Act 1989 s6(2) and s6(2A)

<sup>38</sup> Electricity Act 1989 s6(2A)

<sup>39</sup> Gas Act 1986 s4A(1)

4.5. In addition because it is important that any restriction does not leave consumers without a connection we will check that the applicant's proposals for ensuring consumers remain connected are sufficient.

4.6. We will therefore, when assessing an applicant's proposals to ensure consumers have a connection, check that the proposed arrangements are sufficient to:

- notify affected consumers of the effects of any restriction
- notify existing suppliers of the effects of any restriction
- ensure that arrangements have or will be made to secure alternative connection for affected consumers, and
- ensure that any prospective transporter or distributor is licensed.

### **Notice of proposed grant of gas transporter and electricity transmission licences**

4.7. We will, where we propose to grant a gas transporter or electricity transmission licence, publish a notice stating the reasons why we propose to grant the licence and giving 2 months for which any representations may be made<sup>40</sup>.

4.8. Where we receive representations about a proposal to grant a gas transporter licence or electricity transmission licence we will consider whether they are relevant to the criteria used to assess the application and if necessary the application may be re-assessed.

### **Further review of network licences**

4.9. We intend to further review our procedures for assessing applications for Network Licences for Network Licences over the coming year. Any changes in our procedures will be reflected in updated guidance.

## **Specific criteria for Gas Transporter (GT) licence applications**

### **Proposed arrangements for compliance with certain conditions**

#### *SLC 8 (Provision and Return of Meters)*

4.10. Applicants should note that once licensed, in order to comply with the requirements of this condition they will need to become an accredited MAM or appoint a service provider who is accredited.

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<sup>40</sup> Gas Act 1986 s7(5) & Electricity Act 1989 s6B(3)

*Codes of practice*

4.11. We have previously published guidance<sup>41</sup> for gas transporters on the objective and non-discriminatory criteria by which we will assess the information provided by applicants about compliance with the following SLCs:

- SLC 18 Provision of Services for Persons who are Blind or Deaf
- SLC 19 Arrangements in Respect of Powers of Entry
- SLC 19A Authorisation of Officers
- SLC 19B Exercise of Powers of Entry, and
- SLC 21 Complaint Handling Procedure.

4.12. Applicants must submit the above codes of practice/statements to energywatch and have had regard to any comments made before they are submitted to us for approval<sup>42</sup> as part of the application process. These must be approved by us before a licence is granted.

**Charges and financial ring-fencing provisions**

4.13. All Gas Transporters other than the National Transmission System (NTS) and Gas Distribution Networks are known as Independent Gas Transporters (IGTs).

4.14. On grant an IGT licence will not have the Relative Price Control (RPC) conditions<sup>43</sup> included in the licence. In addition, the ring fencing conditions (contained within Section C of the standard licence conditions) will not have effect in the licence.

4.15. Following grant of an IGT licence, we will consult on and seek the consent of the licensee to modify the standard licence conditions of any licence granted to the applicant<sup>44</sup>, so as to include the RPC conditions in order to bring any new IGT licence into line with existing GT licensees.

4.16. Under the terms of the RPC mechanism<sup>45</sup>, IGTs charges are capped at a level that is broadly consistent with the charges that the Distribution Network would levy for providing similar gas transportation services.

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<sup>41</sup> Distribution and transportation codes of practice. Guidance notes. October 2001. Ofgem. 60/01 <http://www.ofgem.gov.uk/Sustainability/SocAction/NetwrkOps/Documents1/258-10oct01a.pdf>.

<sup>42</sup> In accordance with SLC 22 Preparation, Review of and Compliance with Statements and Customer Service Codes.

<sup>43</sup> New Special Condition 1 and amended standard conditions 4A and 4C (the RPC Conditions).

<sup>44</sup> Under s23(1) of the Gas Act.

<sup>45</sup> See The Regulation of Independent Gas Transporter Charging: Final Proposals. Decision document. July 2003. Ofgem. 64/03 [http://www.ofgem.gov.uk/Networks/GasDistr/IGTReg/Documents1/3946-Decisiondoc\\_IGT\\_Final\\_Proposals.pdf](http://www.ofgem.gov.uk/Networks/GasDistr/IGTReg/Documents1/3946-Decisiondoc_IGT_Final_Proposals.pdf).

4.17. Following grant of an IGT licence, we will also seek the licensee's consent to issue a Transportation Services Direction<sup>46</sup> to give effect to the ring fencing conditions.

4.18. As of March 2006, IGTs have been subject to the financial ring-fencing conditions<sup>47</sup> within section C of the GT licence. The financial ring-fencing conditions cover:

- restrictions on activity
- the availability of adequate resources
- an undertaking from their ultimate controller
- the obtaining of a suitable investment grade credit rating<sup>48</sup>, and
- indebtedness of the licensee.

4.19. While applicants do not have to provide details of their proposed arrangements for compliance with these conditions as part of the application process. Applicants should discuss their proposed arrangements for compliance with these conditions (should they be given effect in the licence) with us at the earliest opportunity.

4.20. Should the RPC and ring fencing conditions be given effect in the licence after the licence has been granted we would expect licensees to comply with the applicable requirements of these conditions.

## Specific criteria for electricity distribution licence applications

### Proposed arrangements for compliance with certain conditions

#### *SLC8 (Provisions Relating to the Connection of Metering Equipment)*

4.21. Applicants should note that they are required to comply with this licence condition from the date that the licence is granted.

#### *SLC 6 (Safety and Security of Supplies Enquiry Service)*

4.22. Applicants must, as part of their licence application, provide details of their proposed arrangements for compliance with this condition. This must be approved by us before a licence is granted.

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<sup>46</sup> By Direction under standard condition 2 of the gas transporter licence.

<sup>47</sup> Financial ring-fencing for new and existing independent gas transporters. Final Proposals. September 2005. Ofgem. 20/05 <http://www.ofgem.gov.uk/Networks/GasDistr/IGTReg/Documents1/11641-20905.pdf>.

<sup>48</sup> or Alternative Arrangements with the prior permission of the Authority.

4.23. During the assessment of the applicant's proposals we will consider whether they demonstrate that:

- the service adequately discriminates between enquiries relating to security, availability and quality of service of the licensee's distribution system, or concerning danger or requiring urgent attention, and other enquiries. It is important to ensure that the efficiency of the service will not suffer due to large numbers of other enquiries
- if any part of the establishment, operation, and maintenance of the service is to be procured from another organisation, the applicant must demonstrate that the contractual arrangements are adequate and the organisation has the capability to provide a satisfactory service
- the service should be available through a wide range of communication media. These must include telephone, correspondence and personal visit. It would also be desirable for them to include Internet and e-mail facilities. All relevant addresses and telephone numbers must be included in the statement required by SLC 6
- the service must provide a telephone response service that is able to receive and process reports and enquiries at all times. Where companies operate an automated telephone answering service, simple and swift access to an operator must be available at all times. The service shall include facilities that can be used by all classes of consumer, including the disabled and the elderly, and shall be free at the point of use, and
- the service should be equally effective in responding to reports and enquiries that are received direct from consumers and those received via supply businesses. The arrangements should not discriminate between reports and enquiries received via different suppliers.

#### *Codes of practice*

4.24. We have previously produced guidance<sup>49</sup> for electricity distributors on the objective and non-discriminatory criteria by which we will assess the information provided by applicants about compliance with the following SLCs:

- SLC 17 Provision of Services for Persons who are of Pensionable Age, Disabled or Chronically Sick
- SLC 18 Provision of Services for Persons who are Blind or Deaf
- SLC 19 Code of Practice on Procedures with Respect to Site Access, and
- SLC 21 Complaint Handling Procedure.

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<sup>49</sup> Distribution and transportation codes of practice. Guidance notes. October 2001. Ofgem 60/01.

4.25. Applicants must submit the above codes of practice/statements to energywatch and have had regard to comments made before they are submitted to us for approval as part of the licence application process<sup>50</sup>. These must be approved by us before a licence is granted.

### **Financial ring fencing and alternative arrangements**

4.26. Applicants must provide details of their proposed arrangements for compliance with the applicable requirements of any modifications that the Authority has indicated it proposes to make to the standard licence conditions prior to the granting of a licence.

4.27. In order to protect electricity customers, the Authority will propose to make a modification to a distribution licence prior to granting the licence. The modification will be the insertion of five financial ring fencing conditions. This is an indication of the Authority's proposal to make a modification, for the purpose of Schedule 2, part 3, paragraph 4 of the Application Regulations. The financial ring fencing conditions refer to:

- availability of resources
- undertakings from ultimate controller
- credit rating
- restriction on activity, and
- indebtedness.

4.28. Following consultation on this proposed modification, we may modify the standard licence conditions in the applicants licence to such extent as we consider requisite to meet the circumstances of the particular case<sup>51</sup>.

4.29. The applicant will need to provide details of their proposed arrangements for compliance with the financial ring fencing licence conditions as part of their application. The Authority will need to be satisfied with the applicants proposed arrangements with BA4 (Undertaking form Ultimate Controller) and BA5 (Credit Rating of Licensee) in order to grant a distribution licence.

4.30. We have published guidance<sup>52</sup> on alternative arrangements that might better suit the circumstances of smaller companies in complying with licence condition BA5 (Credit Rating of Licensee).

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<sup>50</sup>In accordance with SLC 22 Preparation, Review of and Compliance with Statements and Customer Service Codes.

<sup>51</sup> Electricity Act 1989 s8A(2)

<sup>52</sup> Financial Ring Fencing Alternative Arrangements for New Independent Distribution Network Operators, Open Letter, 29 July 2004 <http://www.ofgem.gov.uk/Networks/ElecDist/Policy/IDNOs/Documents1/7811-Alternative%20arrangements%20update%20final.pdf>.



4.31. In order for a distribution licence to be granted, an applicant must satisfy the requirements of licence condition BA4 and BA5.

## **Further information for electricity transmission licence applicants**

### **Extent of participation in transmission**

4.32. The current regulatory arrangements relate to the presence of a single system operator acting on a GB wide basis. Where we intend to grant a licence to an applicant allowing them to undertake system operation activities in a particular area it would be necessary to make changes to the current regulatory arrangements to facilitate this.

4.33. For applicants seeking to undertake transmission ownership activities, we will, in assessing an application, consider whether the activities the applicant wishes to undertake are currently undertaken by another transmission licensee in that particular area.

4.34. Where we intend to grant a licence to an applicant allowing transmission ownership activities to be undertaken in an area currently covered by another transmission licensee's licence, it will be necessary for us to seek to modify the incumbent transmission licensee's licence to remove that area from the incumbent's licence.

### **Standard licence conditions in transmission licences**

4.35. An applicant for a transmission licence will have conditions in effect in its licence according to the activities it plans to undertake.

4.36. An applicant who wishes to act as a transmission owner will have the following sections in effect in its licence:

- Section A. Interpretation, application and payments
- Section B. General, and
- Section D. Transmission owner standard conditions.

4.37. An applicant who wishes to act as a system operator will have the following sections in effect in its licence:

- Section A. Interpretation, applications and payments
- Section B. General, and
- Section C. System operator standard conditions.

**Modification of an electricity transmission licence**

4.38. We will apply the same criteria when assessing an application for a modification of an electricity transmission licence as those used in the assessment of an application for a licence.

4.39. In addition, because it is important that any modification of an area does not affect the operation of the GB transmission system we will take into consideration whether the proposed modification would affect persons connecting to the GB transmission system.

## 5. Interconnector licences

→ This chapter describes specific criteria (in addition to the general criteria set out in chapter 2) against which we will assess applications for gas or electricity interconnector licences.

### Holding of other licences

5.1. We will check the following before granting a interconnector licence:

- electricity interconnector licence applicants do not hold any other electricity licence<sup>53</sup>.
- gas interconnector licence applicants do not hold any other gas licence<sup>54</sup>.

### Additional specific guidance

5.2. We have published a guidance document outlining the procedures that we intend to follow in respect of considering whether to switch on or switch off some or all relevant standard licence conditions, thereby giving effect to an exemption from the EU legislation requiring third party access<sup>55</sup>.

5.3. Interconnector licence applicants are encouraged to refer to this guidance as it is intended to help market participants better understand the requirements contained in the gas and electricity interconnector licence. The guidance:

- further describes the meaning of key concepts as detailed within the licence (such as participation in the operation of an interconnector)
- outlines the procedure that we intend to follow when assessing methodology statements, and
- outlines the procedure that we will follow when considering whether to give an interconnector operator an exemption from certain requirements of the Gas Directive and Electricity Directive and Regulation, which are reflected in the gas and electricity interconnector licences.

5.4. The guidance should be read in conjunction with the standard licence conditions of the gas or electricity interconnector licence.

5.5. The guidance will be kept under review and may be updated from time to time. Any updates will be published on our website.

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<sup>53</sup> Electricity Act 1989 s6(2A)

<sup>54</sup> Gas Act 1986 s7(3)

<sup>55</sup> Electricity and gas interconnector licence - Guidance Document (April 2005)  
[http://authors.ofgem.gov.uk/Licensing/Work/Archive/11162\\_12105.pdf](http://authors.ofgem.gov.uk/Licensing/Work/Archive/11162_12105.pdf).

## 6. The refusal and appeals procedure

→ This chapter describes the procedure that we intend to follow if we propose to refuse an application for a licence or for an extension or restriction of a licence<sup>56</sup>.

### Proposal to refuse an application

6.1. We may propose to refuse an application where, amongst other things:

- the grant of a licence may conflict with our principal or general statutory duties
- any person(s) named in the application are disqualified under the Company Directors Disqualification Act 1986 or undischarged bankrupts,
- any person(s) or entity named in the applications has an unspent criminal conviction,
- the applicant has previously had a licence application refused or a licence revoked,
- the applicant is insolvent<sup>57</sup>
- where there is a court decision<sup>58</sup> that an applicant is using a prohibited name in breach of the Insolvency Act 1986, and
- we consider information supplied to be false or misleading, and the applicant has failed to provide, when requested, additional information within the required time.

### Notification of proposed refusal

6.2. If we propose to refuse an application the reasons will be given to the applicant in a notice which explains what further information, if any, is needed. The notice will:

- state that we propose to refuse the application
- state the reasons why we propose to refuse the application, and
- specify the time within which representations may be made.

6.3. We will allow the applicant 21 days from the date of the Notice to make representations about why it disagrees with our proposal to refuse the application and to provide further information if required. We will consider any representations which are duly made and not withdrawn.

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<sup>56</sup> And for the modification of an area of a licence in the case of a transmission licence.

<sup>57</sup> Within the meaning of the revocation conditions in Schedule 2 of a licence. See paragraphs 2.14 to 2.16 above.

<sup>58</sup> Under the Insolvency Act there are certain exceptions on prohibited names and a court can grant leave making the use of a prohibited name lawful.

### **Final decision to refuse an application**

6.4. Should no representations have been made within 21 days of the Notice or if after considering any representations made the Authority is still of the view that the application should be refused, the applicant will be notified in writing of the decision to refuse the licence. The notification will:

- where no representations have been made, restate the reasons for the refusal of the application, and
- where representations were made, state the reasons for the refusal of the application, referring to the representations made where appropriate.

### **Notification to the European Commission**

6.5. We will forward to the Commission all refusals to grant gas licences together with the reasons given and details of any unsuccessful appeals.

## Appendix 1 – The licensing system

### Gas licences

1.1. The Gas Act prohibits<sup>59</sup> certain activities unless they are licensed or exempt from the requirement to be licensed. We can grant licences for:

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

#### Gas transporter licence

1.2. A gas transporter's licence allows the licensee to:

- convey gas through pipes to any premises within an area specified in the licence held by the gas transporter, and
- convey gas through pipes to any pipeline system operated by another gas transporter, or to any other pipeline system specified in the licence<sup>60</sup>.

#### Gas shipper licence

1.3. A gas shipper's licence allows the licensee to arrange 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, either generally or for purposes connected with the supply of gas to any premises specified in the licence<sup>61</sup>.

#### Gas supplier licence

1.4. A gas supplier's licence allows the licensee to supply to any premises gas which has been conveyed to those premises through pipes<sup>62</sup>. A supply licence may authorise the holder to supply gas to non-domestic premises or to domestic and non-domestic premises<sup>63</sup>.

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<sup>59</sup> Gas Act 1986 s5

<sup>60</sup> Gas Act 1986 s7(2)

<sup>61</sup> Gas Act 1986 s7A(2)

<sup>62</sup> Gas Act 1986 s5(1)

<sup>63</sup> Domestic premises are premises used wholly or mainly for domestic purposes.

### **Gas interconnector licence**

1.5. A gas interconnector licence allows the licensee to participate in the operation of a gas interconnector<sup>64</sup>.

1.6. Participating in the operation on a gas interconnector is defined as:

- co-ordinating and directing the conveyance of gas into or through a gas interconnector, or
- making such an interconnector available for use for the conveyance of gas<sup>65</sup>.

### **Electricity licences**

1.7. The Electricity Act prohibits<sup>66</sup> certain activities unless licensed or exempt from the requirement to be licensed. We can grant licences for:

- electricity generation
- participation in transmission
- electricity distribution
- electricity supply, and
- electricity interconnectors.

### **Electricity generation licence**

1.8. An electricity generator's licence allows the licensee to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be given<sup>67</sup>.

### **Electricity transmission licence**

1.9. An electricity transmission licence allows the licensee to participate in the transmission of electricity for the purpose of enabling a supply to be given<sup>68</sup>.

1.10. A person who participates in the transmission of electricity is a person who:

- co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, or
- makes available for use for the purposes of such a transmission system anything which forms part of it.

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<sup>64</sup> Gas Act 1986 s7ZA

<sup>65</sup> Gas Act 1986 s5(6)

<sup>66</sup> Electricity Act 1989 s4

<sup>67</sup> Electricity Act 1989 s6(1)(a)

<sup>68</sup> Electricity Act 1986 s6(1)(b)

1.11. It is not necessary for a person to undertake both elements in order to be undertaking a licensable activity and therefore to require a licence.

1.12. Transmission in relation to electricity means to transmit by means of a transmission system<sup>69</sup>. A transmission system consists (wholly or mainly) of high voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.

1.13. The Authority can, with the consent of the licensee, modify the area of a transmission licensee's licence.

### **Electricity distribution licence**

1.14. An electricity distribution licence allows the licensee to distribute electricity for the purpose of enabling a supply to be given<sup>70</sup>. Distribute means distribute by means of a distribution system<sup>71</sup>. A distribution system consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system.

### **Electricity supplier licence**

1.15. An electricity supplier's licence allows the licensee to supply electricity to premises<sup>72</sup>. Supply in relation to electricity means supply of electricity conveyed by a distribution system to premises other than premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on<sup>73</sup>.

1.16. A supplier's licence may authorise the holder to supply electricity:

- to any premises
- only to premises specified in the licence, or to premises of a description so specified, or
- only to any premises situated in a specified area, or to premises of a specified description which are so situated.

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<sup>69</sup> Electricity Act 1989 s4(4)

<sup>70</sup> Electricity Act 1989 s6(1)(c))

<sup>71</sup> Electricity Act 1989 s4(4)

<sup>72</sup> Electricity Act 1989 s6(1)(d)

<sup>73</sup> Electricity Act 1989 s4(4)



**Electricity interconnector licence**

1.17. A electricity interconnector licence allows the licensee to participate in the operation of an electricity interconnector<sup>74</sup>

1.18. Participating in the operation on an electricity interconnector is defined as:

- co-ordinating and directing the flow of electricity into or through an electricity interconnector, or
- making such an interconnector available for use for the conveyance of electricity<sup>75</sup>.

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<sup>74</sup> Electricity Act 1989 s6(1)(e)

<sup>75</sup> Electricity Act 1989 s4(3C)