

## Gas and electricity licence applications - Guidance



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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 the procedures that we will 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.
- Supply Licence Review - Final Proposals. June 2007. Ref: 128/07
- 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.
- Licensing Offshore Electricity Transmission - a joint Ofgem / BERR consultation. November 2006. Ref: 199/06
- Offshore Electricity Transmission - a joint Ofgem / BERR Policy Statement. July 2007. Ref: 189/07

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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 replaces previous guidance for licence applicants<sup>2</sup>. It sets out the proposed revised procedures that we will 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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<sup>2</sup> Gas and electricity licence applications. Guidance Document. March 2005. Ref: 86/05  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10659\\_8605.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10659_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> The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007 SI No. 1971 and The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007 SI No. 1972

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.

1.13. All the standard licence conditions may be viewed on our electronic Public Register via our website<sup>9</sup>.

## Future reviews

### Offshore wind and network licences

1.14. Ofgem/BERR<sup>10</sup> has published a joint consultation<sup>11</sup> on the appropriate regime for licensing offshore activities.

1.15. No significant changes have been made to our procedures for assessing applications for Network Licences<sup>12</sup> at this time. However, we intend to review this over the coming year.

1.16. 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> <http://epr.ofgem.gov.uk/index.php?pk=folder97241>

<sup>10</sup> Department for Business Enterprise & Regulatory Reform (Formerly the Department of Trade and Industry (DTI))

<sup>11</sup> Licensing Offshore Electricity Transmission - a joint Ofgem / BERR consultation. November 2006. Ofgem 199/06. [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/17689\\_199\\_06.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/17689_199_06.pdf). A joint Ofgem/BERR policy statement was published in July 2007.

<http://www.ofgem.gov.uk/Networks/Trans/Offshore/ConsultationDecisionsResponses/Documents1/Offshore%20Policy%20statement%20FINAL.pdf>.

<sup>12</sup> Electricity Distribution and Gas Transporter licence applications

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## 2. Assessing licence applications

→ This chapter describes the general procedures that we will 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 specify 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)		Specific criteria
	Schedule 1	Schedule 2	
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> <li>▪ See pages 16-18</li> </ul>
Interconnector		Part 4	<ul style="list-style-type: none"> <li>▪ Additional specific guidance</li> <li>▪ See page 22</li> </ul>

#### Electricity licences

Licence type	Applicable parts of the Application Regulations and guidance		
	General criteria (regs)		specific criteria
	Schedule 1	Schedule 2	
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>▪ Codes of practice</li> <li>▪ SLC 6</li> <li>▪ Codes of practice</li> <li>▪ See pages 18-20</li> </ul>
Transmission		Part 2	<ul style="list-style-type: none"> <li>▪ Further information</li> <li>▪ See pages 20-21</li> </ul>
Interconnector		Part 5	<ul style="list-style-type: none"> <li>▪ Additional specific guidance</li> <li>▪ See page 22</li> </ul>

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

Application type	Application fee
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>13</sup> are required to make arrangements for a 28 calendar day notice of application 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

<sup>13</sup> Applications for licences, extension or restriction of licences

applicant decides to publish a notice on its own website, the applicant must provide us with the 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>14</sup> application, including all necessary supporting documentation and information<sup>15</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>16</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.

2.11. Before giving consent to the transfer of a licence. We will consult for a period of not less than 2 months on the proposed transfer<sup>17</sup>.

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

2.12. Applications for modification of an area (transmission licences only) and extensions or restrictions of licences must satisfy the requirements for information set out in the Application Regulations. However, information about the applicant's codes of practice<sup>18</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.

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<sup>14</sup> An application that is properly completed in the form and manner specified by the Application Regulations

<sup>15</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>16</sup> Gas Act 1986 s8AA(6) and Electricity Act 1989 s7A(6)

<sup>17</sup> Gas Act 1986 s8AA(9) and Electricity Act s 7A(9)

<sup>18</sup> No codes of practice need to be submitted for extensions to supply licences.

2.13. 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

2.14. The Application Regulations require a declaration of unspent<sup>19</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

2.15. We will check the Companies House web site<sup>20</sup> and other available sources<sup>21</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

are not disqualified.

### Insolvency

2.16. The concept of "insolvency" for the purpose of triggering our discretion to revoke a licence is defined in the revocation conditions<sup>22</sup>. We may revoke a licence on insolvency grounds, on giving not less than 24 hours notice, if the licensee:

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<sup>19</sup> "Unspent" under the Rehabilitation of Offenders Act 1974.

<sup>20</sup> <http://www.companieshouse.org.uk>

<sup>21</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/>

- 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.

2.17. 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>23</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.

2.18. 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**

2.19. 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>24</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.

### **Prohibited names<sup>25</sup>**

2.20. 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>26</sup> in the minority of cases where there is abuse of the phoenix company arrangements.

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<sup>22</sup> Schedule 2 of the relevant licence paragraph 1(f)

<sup>23</sup> This includes a court decision, appointment of a receiver, or if a resolution for winding-up is passed by the company.

<sup>24</sup> Where the licence was not being used and the licensee has requested revocation of licence and we have agreed to that request.

<sup>25</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>26</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.

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2.21. 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.

2.22. We will not grant a licence where there is a court decision<sup>27</sup> that an applicant is using a prohibited name in breach of the Insolvency Act 1986.

2.23. In addition, we shall ordinarily await the final outcome of any court proceedings to determine that question and/or pursuant to which a claimant has sought the leave of the court to use a prohibited name, before granting a licence to the applicant company.

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

2.24. 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>28</sup>.

2.25. However, we cannot conduct any check<sup>29</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.

2.26. Where they exist, entry testing arrangements<sup>30</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.

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

2.27. 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

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<sup>27</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>28</sup> Gas Act 1986 s4AA(2)(b) and Electricity Act 1989 s3A(2)(b)

<sup>29</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>30</sup> entry testing arrangements under the various industry codes include credit rating, interoperability and disaster recovery.

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2.28. 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>31</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>32</sup>, and
- electricity supply licence applicants do not hold an electricity distribution licence or an electricity interconnector licence<sup>33</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>31</sup> SLC26 (Services for specific Domestic Customer groups), SLC27 (Payments, Security Deposits and Disconnections), and SLC28 (Prepayment meters).

<sup>32</sup> Gas Act 1986 s7(3) and s7A(3)

<sup>33</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>34</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>35</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>36</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>37</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>34</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>35</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>36</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>37</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>38</sup>,
- electricity distribution licence applicants do not hold an electricity supply licence or an electricity interconnector licence<sup>39</sup>, and
- electricity transmission licence applicants do not hold an electricity interconnector licence<sup>40</sup>.

#### Safe operation of transportation and distribution systems

4.2. We will, where appropriate, consult the Health and Safety Executive (HSE) and BERR 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>41</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 BERR 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.

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.

<sup>38</sup> Gas Act 1986 s7(3) and s7A(3)

<sup>39</sup> Electricity Act 1989 s6(2) and s6(2A)

<sup>40</sup> Electricity Act 1989 s6(2A)

<sup>41</sup> Gas Act 1986 s4A(1)

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>42</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.

#### *Codes of practice*

4.11. We have previously published guidance<sup>43</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:

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<sup>42</sup> Gas Act 1986 s7(5) & Electricity Act 1989 s6B(3)

- 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>44</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>45</sup> included in the licence. In addition, the financial ring fencing conditions contained within Section C of the standard licence conditions (the financial ring fencing 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 the licence granted to the applicant<sup>46</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>47</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.

4.17. Following grant of an IGT licence, we will also seek the licensee's consent to issue a Transportation Services Direction<sup>48</sup> to give effect to the financial ring fencing conditions.

4.18. As of March 2006, all IGTs have the financial ring-fencing conditions<sup>49</sup> in effect in their licence. The financial ring-fencing conditions cover:

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<sup>43</sup> Distribution and transportation codes of practice. Guidance notes. October 2001. Ofgem. 60/01 [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/2081\\_60\\_distribution.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/2081_60_distribution.pdf).

<sup>44</sup> In accordance with SLC 22 Preparation, Review of and Compliance with Statements and Customer Service Codes.

<sup>45</sup> New Special Condition 1 and amended standard conditions 4A and 4C (the RPC Conditions).

<sup>46</sup> Under s23(1) of the Gas Act.

<sup>47</sup> See The Regulation of Independent Gas Transporter Charging: Final Proposals. Decision document. July 2003. Ofgem. 64/03

[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/3836\\_Decisiondoc\\_IGT\\_Final\\_Proposals.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/3836_Decisiondoc_IGT_Final_Proposals.pdf).

<sup>48</sup> By Direction under standard condition 2 of the gas transporter licence.

<sup>49</sup> Financial ring-fencing for new and existing independent gas transporters. Final Proposals. September 2005. Ofgem. 209/05 [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/12444\\_20905.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/12444_20905.pdf).

- restrictions on activity
- the availability of adequate resources
- an undertaking from their ultimate controller
- the obtaining of a suitable investment grade credit rating<sup>50</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. In the event that the RPC and financial ring fencing conditions are 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.

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

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<sup>50</sup> or Alternative Arrangements with the prior permission of the Authority.

- 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>51</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.

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>52</sup>. These must be approved by us before a licence is granted.

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

4.26. Schedule 2, part 2, paragraph 4 of the Application Regulations require that 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.

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<sup>51</sup> Distribution and transportation codes of practice. Guidance notes. October 2001. Ofgem 60/01.

<sup>52</sup>In accordance with SLC 22 Preparation, Review of and Compliance with Statements and Customer Service Codes.

4.27. In order to protect electricity customers, the Authority hereby indicates, for the purposes of schedule 2, part 2, paragraph 4 of the Application Regulations, that it will propose to make a modification to the standard conditions of distribution licences prior to granting a distribution licence. The modification will be the insertion of five financial ring-fencing conditions, which 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>53</sup>.

4.29. The applicant will need to provide details of their proposed arrangements for compliance with these financial ring fencing licence conditions as part of their application.

4.30. In particular, the Authority will need to be satisfied with the applicants proposed arrangements with BA4 (Undertaking from Ultimate Controller) and BA5 (Credit Rating of Licensee) in order to grant a distribution licence.

4.31. We have published guidance<sup>54</sup> on alternative arrangements that might better suit the circumstances of smaller companies in complying with licence condition BA5 (Credit Rating of Licensee).

4.32. 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**

4.33. 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.

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<sup>53</sup> Electricity Act 1989 s8A(2)

<sup>54</sup> Financial Ring Fencing Alternative Arrangements for New Independent Distribution Network Operators, Open Letter, 29 July 2004  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/8017\\_Alternative\\_arrangements\\_update\\_final.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/8017_Alternative_arrangements_update_final.pdf)



4.34. 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.

4.35. 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**

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

4.37. 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.

4.38. 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**

4.39. 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.

4.40. 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>55</sup>.
- gas interconnector licence applicants do not hold any other gas licence<sup>56</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>57</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>55</sup> Electricity Act 1989 s6(2A)

<sup>56</sup> Gas Act 1986 s7(3)

<sup>57</sup> Electricity and gas interconnector licence - Guidance Document (April 2005)  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11162\\_12105.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/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>58</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>59</sup>
- where there is a court decision<sup>60</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>58</sup> And for the modification of an area of a licence in the case of a transmission licence.

<sup>59</sup> Within the meaning of the revocation conditions in Schedule 2 of a licence. See paragraphs 2.14 to 2.16 above.

<sup>60</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>61</sup> certain activities unless they are licensed or exempt from the requirement to be licensed. Ofgem 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>62</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>63</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>64</sup>. A supply licence may authorise the holder to supply gas to non-domestic premises or to domestic and non-domestic premises<sup>65</sup>.

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<sup>61</sup> Gas Act 1986 s5

<sup>62</sup> Gas Act 1986 s7(2)

<sup>63</sup> Gas Act 1986 s7A(2)

<sup>64</sup> Gas Act 1986 s5(1)

<sup>65</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>66</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>67</sup>.

### **Electricity licences**

1.7. The Electricity Act prohibits<sup>68</sup> certain activities unless licensed or exempt from the requirement to be licensed. Ofgem 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>69</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>70</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>66</sup> Gas Act 1986 s7ZA

<sup>67</sup> Gas Act 1986 s5(6)

<sup>68</sup> Electricity Act 1989 s4

<sup>69</sup> Electricity Act 1989 s6(1)(a)

<sup>70</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>71</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>72</sup>. Distribute means distribute by means of a distribution system<sup>73</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>74</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>75</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>71</sup> Electricity Act 1989 s4(4)

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

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

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

<sup>75</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>76</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>77</sup>.

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<sup>76</sup> Electricity Act 1989 s6(1)(e)

<sup>77</sup> Electricity Act 1989 s4(3C)



Appendix 2 - The Application Regulations 2007

2007 No. 1971

**GAS**

**The Gas (Applications for Licences and Extensions and  
Restrictions of Licences) Regulations 2007**

*Made*

*10th July 2007*

*Coming into force*

*1st August 2007*

The Gas and Electricity Markets Authority(a), in exercise of the powers conferred by sections 7B(1), (2) and (11) and 47 of the Gas Act 1986(b) makes the following Regulations:

**Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007 and shall come into force on 1st August 2007.

(2) The Gas (Applications for Licences and Extensions and Restrictions of Licences) (No. 2) Regulations 2004(c) (“the 2004 Regulations”) are revoked.

**Transitional provisions**

2.—(1) Where an application has been made under the 2004 Regulations but at the point at which these Regulations come into force the application has neither been granted nor refused, the application shall be treated thereafter as having been made under these Regulations.

(2) An application to which paragraph (1) applies which conformed to the requirements of the 2004 Regulations and was accompanied by the fee prescribed under those regulations shall not be treated as defective by virtue only of failure in any respect to comply with these Regulations.

(3) Where, in relation to an application to which paragraph (1) applies, the applicant, before the coming into force of these Regulations, published a notice of the application in accordance with the 2004 Regulations the requirements of these Regulations as regards publication shall be taken to have been met.

**Interpretation**

3.—(1) In these Regulations —

“the 2000 Act” means the Utilities Act 2000(d);

“the 2004 Act” means the Energy Act 2004(e);

“the Act” means the Gas Act 1986;

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(a) The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27)  
(b) 1986 c.44: section 7B of the Gas Act was inserted by section 74(7) of the Utilities Act 2000  
(c) S.I. 2004/2983  
(d) 2000 c.27  
(e) 2004 c.20

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

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

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

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

“interconnector licence” means a licence granted or to be granted under section 7ZA(1) of the Act(c);

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

“signed” includes signed in a manner which would for the purposes of section 7 of the Electronic Communications Act 2000(e) be an electronic signature;

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

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

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

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

(2) In these Regulations, unless the context otherwise requires, a reference to a standard condition is a reference, —

- (a) in relation to a shipper licence, a supplier licence or a transporter licence, to a standard condition which is determined under section 81(2) of the 2000 Act(g); or
- (b) in relation to an interconnector licence, to a standard condition which is determined under section 150(1) of the 2004 Act,

subject to any modifications of the standard conditions made under Part I of the Act, the 2000 Act, or the 2004 Act, after the determination under those sections.

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

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

### **Manner of Application**

4. An application shall be—

- (a) made in writing, addressed to the Authority and delivered or sent by prepaid post to the Authority at its principal office or sent by electronic mail to an address specified by the Authority; and

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(a) section 7 was substituted by section 5 of the Gas Act 1995 (c.45)

(b) section 7A was inserted by section 6 of the Gas Act 1995

(c) section 7ZA was inserted by section 149 of the Energy Act 2004

(d) section 7(4A) was inserted by section 76(4) of the Utilities Act 2000

(e) 2000 c.7

(f) 1985 c.6

(g) section 81(2) was amended by section 168(10) of the Energy Act 2004

- (b) signed and dated by or on behalf of the applicant, stating, where signed on behalf of the applicant, the capacity of the signatory.

#### **Form of application**

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

#### **Additional information and documents to accompany application**

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

- (a) an application in respect of a supplier licence shall be accompanied by the information and documents specified in Part 1 of Schedule 2;
- (b) an application in respect of a shipper licence shall be accompanied by the information and documents specified in Part 2 of Schedule 2;
- (c) an application in respect of a transporter licence shall be accompanied by the information and documents specified in Part 3 of Schedule 2; and
- (d) an application in respect of an interconnector licence shall be accompanied by the information and documents specified in Part 4 of Schedule 2.

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

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

(3) Where a modification to any standard condition is requested in accordance with paragraph 4(1) of Schedule 1, the obligation imposed by paragraph (2)(a) shall be modified accordingly.

#### **Application fees**

7.—(1) Subject to paragraph (2), the prescribed fee in relation to an application of the description specified in the first column of the Table in Schedule 3 shall be the corresponding fee specified in the second column of that Table.

(2) Where more than one fee would, but for this paragraph, be payable in respect of a particular application, the prescribed fee shall be the higher or highest such fee.

#### **Publication of notice of application**

8.—(1) The period prescribed for the purpose of section 7B(2) of the Act<sup>(b)</sup> (notice of applications) is ten working days (“the prescribed period”).

(2) The prescribed manner of publication for that purpose shall be either by—

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

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(a) section 8(2) was amended by paragraph 2 of schedule 6 of the Utilities Act 2000  
(b) section 7B was inserted by section 7 of the Gas Act 1995

(at “www.ofgem.gov.uk” or such other website address as may be notified to the applicant by the Authority in writing).

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

(4) In this Regulation “working day” shall have the same meaning as in section 64 of the Electricity Act 1989(a).

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



*Sarah Harrison*  
A member of the Authority  
For and by the Gas and Electricity Markets Authority

10th July 2007

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(a) 1989 c.29

SCHEDULE 1

Regulation 5

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

GENERAL PARTICULARS

1. State—

- (a) name and registered address of applicant in full. In the case of a partnership or other joint venture (other than a body corporate), give the names and addresses of each party concerned.....
- (b) name, address, facsimile number (where applicable), telephone number and electronic mail address (where applicable) of person to whom correspondence or enquiries concerning the application should be directed.....
- (c) where the address provided in paragraph 1(a) is not an address in Great Britain an address in Great Britain for service of documents.....
- (d) whether the application is in respect of a supplier licence, a shipper licence, a transporter licence or an interconnector licence<sup>(a)</sup>.....
- (e) whether the application is for a licence, an extension of a licence or a restriction of a licence<sup>(b)</sup>.....
- (f) the date from which the licence or extension or restriction is desired to take effect.....
- (g) the kind of gas to which the application relates<sup>(c)</sup>.....

2. State—

- (a) whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the legal status).....
- (b) where the applicant is a body corporate, —
  - (i) the jurisdiction under which it is incorporated.....
  - (ii) if applicable, its registered number.....

(a) Application may not be made on the same form in respect of more than one of these types of licence.  
 (b) An application may not be made for the extension or restriction of an interconnector licence, or for the extension of a licence which authorises only the supply to premises of gas which has been conveyed to the premises otherwise than by a gas transporter.  
 (c) For example, natural gas, liquid petroleum gas, coal bed methane.

- (iii) the full names and home addresses of its current directors (including any shadow directors within the meaning of section 741 of the Companies Act 1985) or, where applicable, the corresponding officers.....  
.....
  - (iv) the name and registered office of any ultimate holding company of the applicant and its current directors (within the meaning of sections 736, 736A and 736B of the Companies Act 1985) and the name and registered or principal office of any parent undertaking (within the meaning of section 258 of the Companies Act 1985) of the applicant.....  
.....
  - (c) where the applicant is neither a body corporate nor a sole trader, the name(s) and address(es) of the person or persons in whom effective control of the applicant rests.....  
.....
  - (d) where any person (other than a person whose name is given at paragraph 2(b)(iv) or paragraph 2(c)) holds 20 per cent or more of any class of the shares<sup>(a)</sup> of the applicant, the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.....  
.....
3. Give particulars of any licences under the Act or the Electricity Act 1989 held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person<sup>(b)</sup> in relation to the applicant.....  
.....

*DETAILS OF APPLICATION*

4. —(1) If the application is for a licence other than a supplier licence of the type specified in section 8(2) of the Act —
- (a) provide details of any modification requested to any of the standard conditions for the type of licence for the purposes of section 8(3) of the Act; and
  - (b) state the grounds on which the applicant believes that—
    - (i) any such modification is requisite to meet the circumstances of the particular case; and
    - (ii) if the application is for a shipper licence or supplier licence, any such modification is such that no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences (including the applicant).

- (a) Reference to shares-
  - i) in relation to an applicant with share capital, are to allotted shares;
  - ii) in relation to an applicant with capital but no share capital, are rights to share in the capital of the applicant; and
  - iii) in relation to an applicant without share capital, are to interests-
    - (aa) conferring any right to share in the profits or liability to contribute to the losses of the applicant; and
    - (bb) giving rise to an obligation to contribute to the debts or expenses of the applicant in the event of winding up.
- (b) In this paragraph “related person” means- (i) in relation to an applicant who is an undertaking within the meaning of section 259 of the Companies Act 1985 (“the principal undertaking”), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of the parent undertaking of the principal undertaking, in each case within the meaning of section 258 of that Act; and (ii) in relation to any applicant (including such an undertaking), a connected person of the applicant within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992 (c.12).

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

*CRIMINAL OFFENCES*

5. Either—

- (a) give particulars of any criminal convictions of the applicant and any other person specified in paragraph 2(b)(iii), 2(b)(iv), 2(c) or 2(d) (other than for offences under the Road Traffic Offenders Act 1988<sup>(a)</sup> or convictions in respect of which the person has become rehabilitated under the Rehabilitation of Offenders Act 1974<sup>(b)</sup>); or
- (b) provide a statement that there are no relevant convictions.

SCHEDULE 2

Regulation 6

PART 1

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A SUPPLIER LICENCE<sup>(c)</sup>

1. A supplier licence may authorise the holder to supply gas—

- (a) to any premises;
- (b) only to premises specified in the licence, or to premises of a description so specified; or
- (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated, (section 7A(1) of the Act).

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

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

*RESTRICTION OF A SUPPLIER LICENCE*

3. If the application is for a restriction of a licence provide—

- (a) an estimate of the total number of premises to which the applicant supplies gas at the time of the application and which the applicant would cease to supply gas if the application were acceded to; and

(a) 1988 c.53

(b) 1974 c.53

(c) In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement— (i) with an application made by the applicant in accordance with these Regulations; or (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

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



- (b) unless there are, at the date of the application, no relevant consumers (within the meaning of section 7A(10) of the Act) in relation to the applicant, a description of the applicant's proposed arrangements under section 7A(9) of the Act for—
  - (i) ensuring continuity of supply for all such relevant consumers; and
  - (ii) in the case of each such consumer who is supplied with gas in pursuance of a contract (within the meaning of that section), securing such continuity on the same terms as nearly as may be as the terms of the contract.

## PART 2

### FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A SHIPPER LICENCE<sup>(a)</sup>

1. A shipper licence may authorise the holder to—
  - (a) make arrangements generally with any gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
  - (b) make such arrangements for purposes connected with the supply of gas to specified premises, being—
    - (i) any premises in a specified area;
    - (ii) any premises of a specified description (whether in a specified area or throughout Great Britain); or
    - (iii) particular premises, (section 7A(2) of the Act).

Provide a sufficient description adequately specifying the premises or a description of the premises, and also the specified area, if any, to which the application relates<sup>(b)</sup>.

## PART 3

### FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A TRANSPORTER LICENCE<sup>(c)</sup>

1. A transporter licence may authorise the holder to convey gas—
  - (a) to any premises; and/or
  - (b) to any pipe-line system operated by another gas transporter—
    - (i) throughout Great Britain; or
    - (ii) within a specified area or areas.

(a) In this part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement— (i) with an application made by the applicant in accordance with these Regulations; or (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

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

(c) In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ significantly from or add significantly to the most recent information or documents which were provided in relation to the same requirement— (i) with an application made by the applicant in accordance with these Regulations; or (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

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

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

2. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 18 (Provision of Services for Persons who are Blind or Deaf), 19 (Arrangements in Respect of Powers of Entry), 19A (Authorisation of Officers), 19B (Exercise of Powers of Entry) and 21 (Complaint Handling Procedure).

#### *RESTRICTION OF A TRANSPORTER LICENCE*

3. If the application is for a restriction of a licence provide—

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

### PART 4

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

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

2. In relation to an application for a licence in respect of an interconnector the construction of which was not completed by 3 August 2003, state whether the applicant seeks not to have applied to the licence any or all of the following standard licence conditions —

- (a) conditions relating to the charging methodology to apply to third party access to the licensee's interconnector;

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

- (b) conditions relating to the requirement to offer terms to an applicant for access to the licensee's interconnector.

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

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

## SCHEDULE 3

Regulation 7

### APPLICATION FEES

<i>Description of application</i>	<i>Fee payable £</i>
<i>Supplier</i>	
1. Application for licence including authorisation to supply gas to premises to which gas is, or is to be, conveyed by a gas transporter	450
2. Application for licence including authorisation to supply gas to premises to which gas is, or is to be, conveyed otherwise than by a gas transporter	350
3. Application for any extension or restriction	450
<i>Shipper</i>	
4. Any application	350
<i>Transporter</i>	
5. Application for a licence	1050
6. Application for extension or restriction	150
<i>Interconnector</i>	
7. Application for a licence	1050

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

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

These Regulations come into force on 1st August 2007. Regulation 1 provides for the citation, commencement and revokes the previous Regulations. Regulation 2 makes transitional provisions for applications made but not determined before the Regulations come into force.

Regulation 3 provides for general interpretation.

Regulation 4 deals with the manner of applications.

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

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

- supplier licences, at Part 1;
- shipper licences, at Part 2;
- transporter licences, at Part 3; and
- interconnector licences, at Part 4.

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

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

£3.00

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**2007 No. 1972**

**ELECTRICITY**

**The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007**

*Made* - - - - - *10th July 2007*

*Coming into force* - - - - - *1st August 2007*

The Gas and Electricity Markets Authority(a), in exercise of the powers conferred by sections 6A(2), (3) and (6) and 60 of the Electricity Act 1989(b) makes the following Regulations:

**Citation, commencement and revocation**

1.—(1) These Regulations may be cited as the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007 and shall come into force on 1st August 2007.

(2) The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No. 2) Regulations 2004(c) (“the 2004 Regulations”) are revoked.

**Transitional provisions**

2.—(1) Where an application has been made under the 2004 Regulations but at the date upon which these Regulations come into force the application has neither been granted nor refused, the application shall be treated thereafter as having been made under these Regulations.

(2) An application to which paragraph (1) applies which conformed to the requirements of the 2004 Regulations in force at the time it was made and was accompanied by the fee prescribed under those regulations shall not be treated as defective by virtue only of failure in any respect to comply with these Regulations.

(3) Where, in relation to an application to which paragraph (1) applies, the applicant, before the coming into force of these Regulations, published a notice of the application in accordance with the 2004 Regulations, the requirements of these Regulations as regards publication shall be taken to have been met.

**Interpretation**

3.—(1) In these Regulations —  
“the 2000 Act” means the Utilities Act 2000(a);

---

(a) The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27)  
(b) 1989 c.29: with effect from 1 October 2001, section 30 of the Utilities Act 2000 introduced section 6A into the Electricity Act 1989  
(c) SI. 2004/2952

“the 2004 Act” means the Energy Act 2004(b);

“the Act” means the Electricity Act 1989;

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

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

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

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

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

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

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

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

“restriction”, in relation to a supply licence, means a restriction of the licence under section 6(4) of the Act and, in relation to a distribution licence, means a restriction of the licence under section 6(6) of the Act, and, in relation to a transmission licence, means a modification of an area of the licence under section 6(6B) of the Act by a restriction of the area of the licence;

“signed” includes signed in a manner which would for the purposes of section 7 of the Electronic Communications Act 2000(f) be an electronic signature;

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

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

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

(2) In these Regulations, unless the context otherwise requires, a reference to a standard condition is a reference, —

(a) in relation to a distribution licence, a generation licence, a supply licence or a transmission licence, to a standard condition which is determined under section 33(1) of the 2000 Act(i) or section 137(1) of the 2004 Act; or

(b) in relation to an interconnector licence, to a standard condition which is determined under section 146(1) of the 2004 Act,

subject to any modifications of the standard conditions made under Part I of the Act, the 2000 Act, or the 2004 Act after the determination under those sections.

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

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(a) 2000 c.27

(b) 2004 c.20

(c) section 6 was substituted by section 30 of the Utility Act 2000

(d) section 6(1)(e) was inserted by section 145 of the Energy Act 2004

(e) section 6(6B) was inserted by section 136 of the Energy Act 2004

(f) 2000 c.7

(g) section 6(1)(b) was amended by section 136 of the Energy Act 2004

(h) 1985 c.6

(i) section 33(1) was amended by section 143(1) of the Energy Act 2004

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

#### **Manner of Application**

4. An application shall be—

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

#### **Form of application**

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

#### **Additional information and documents to accompany application**

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

- (a) an application in respect of a transmission licence shall be accompanied by the information and documents specified in Part 1 of Schedule 2;
- (b) an application in respect of a distribution licence shall be accompanied by the information and documents specified in Part 2 of Schedule 2;
- (c) an application in respect of a supply licence shall be accompanied by the information and documents specified in Part 3 of Schedule 2; and
- (d) an application in respect of an interconnector licence shall be accompanied by the information and documents specified in Part 4 of Schedule 2.

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

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

(3) Where a modification to any standard condition is requested in accordance with paragraph 4 of Schedule 1, the obligation imposed by paragraph (2)(a) shall be modified accordingly.

#### **Application fees**

7.—(1) Subject to paragraph (2), the prescribed fee in relation to an application of the description specified in the first column of the Table in Schedule 3 shall be the corresponding fee specified in the second column of that Table.

(2) Where more than one fee would, but for this paragraph, be payable in respect of a particular application, the prescribed fee shall be the higher or highest such fee.



**Publication of notice of application**

8.—(1) The period prescribed for the purpose of section 6A(3) of the Act(a) (notice of applications) is ten working days (“the prescribed period”).

(2) The prescribed manner of publication for that purpose shall be either by—

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

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

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



10th July 2007

*Sarah Harrison*  
A member of the Authority  
For and by the Gas and Electricity Markets Authority

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(a) section 6A was inserted by section 30 of the Utilities Act 2000

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

General Particulars

1. State—

- (a) name and registered address of applicant in full. In the case of a partnership or other joint venture (other than a body corporate), give the names and addresses of each party concerned.....
- (b) name, address, facsimile number (where applicable), telephone number and electronic mail address (where applicable) of person to whom correspondence or enquiries concerning the application should be directed.....
- (c) where the address provided in paragraph 1(a) is not an address in Great Britain an address in Great Britain for service of documents.....
- (d) whether the application is in respect of a generation licence, a transmission licence, a distribution licence, a supply licence or an interconnector licence(a).....
- (e) whether the application is for a licence, a modification of an area(b), an extension of a licence or a restriction of a licence(c).....
- (f) the date from which the licence, the modification of an area or extension or restriction is desired to take effect.....

2. State—

- (a) whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the legal status).....
- (b) where the applicant is a body corporate, —
  - (i) the jurisdiction under which it is incorporated.....
  - (ii) if applicable, its registered number.....

---

(a) Application may not be made on the same form in respect of more than one of these types of licence.  
 (b) Application for a modification of an area may only be made in relation to a transmission licence.  
 (c) Application may not be made for an extension or restriction of a generation or an interconnector licence.

- (iii) the full names and home addresses of its current directors (including any shadow directors within the meaning of section 741 of the Companies Act 1985) or, where applicable, the corresponding officers.....  
.....  
.....
- (iv) the name and registered office of any ultimate holding company of the applicant and its current directors (within the meaning of sections 736, 736A and 736B of the Companies Act 1985) and the name and registered or principal office of any parent undertaking (within the meaning of section 258 of the Companies Act 1985) of the applicant.....  
.....  
.....
- (c) where the applicant is neither a body corporate nor a sole trader, the name(s) and address(es) of the person or persons in whom effective control of the applicant rests..  
.....
- (d) where any person (other than a person whose name is given at paragraph 2(b)(iv) or paragraph 2(c)) holds 20 per cent or more of any class of the shares<sup>(a)</sup> of the applicant, the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.....  
.....

3. Give particulars of any licences under the Act or the Gas Act 1986<sup>(b)</sup> held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person<sup>(c)</sup> in relation to the applicant.....  
.....

*DETAILS OF APPLICATION*

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

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(a) References to shares —

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

(b) 1986 c.44

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

- (bb) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the applicant).

### *CRIMINAL OFFENCES*

#### 5. Either—

- (a) give particulars of any criminal convictions of the applicant and any other person specified in paragraph 2(b)(iii), 2(b)(iv), 2(c) or 2(d) (other than for offences under the Road Traffic Offenders Act 1988<sup>(a)</sup> or convictions in respect of which the person has become rehabilitated under the Rehabilitation of Offenders Act 1974<sup>(b)</sup>); or
- (b) provide a statement that there are no relevant convictions.

## SCHEDULE 2

Regulation 6

### PART 1

#### FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A TRANSMISSION LICENCE<sup>(c)</sup>

1. Provide a brief description of the activities that the applicant intends to carry out with respect to the transmission of electricity.
2. Provide a sufficient description of—
- (a) the area to which the application relates; and
- (b) where different to the area in sub-paragraph (a), the area in which the applicant intends to carry out activities under a transmission licence<sup>(d)</sup>.

#### *MODIFICATION OF AN AREA OF A TRANSMISSION LICENCE*

3. If the application is for a modification of an area of a transmission licence and the modification in question constitutes a restriction of the area, also provide details of any of the following persons who may be affected by the application—
- (a) any person authorised by a licence granted under section 6(1) of the Act or an exemption granted under section 5(1) of the Act;
- (b) any person directly connected to the applicant's transmission system; and
- (c) any other person who may reasonably be affected by the restriction which is the subject of the application.

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(a) 1988 c.53.

(b) 1974 c.53.

(c) **In this Part** of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement— (i) with an application made by the applicant in accordance with these Regulations; or (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

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

## PART 2

### FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A DISTRIBUTION LICENCE<sup>(a)</sup>

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

Please specify which of (a) or (b) is applicable, and in the case of (b) provide a sufficient description adequately specifying the area(s) or premises to which the application relates<sup>(b)</sup>

2. Provide a statement of the extent (if any) to which the applicant considers it necessary for powers under Schedule 3 (compulsory acquisition of land etc.) and under Schedule 4 (other powers etc.) to the Act to be given through the licence for which he is applying.
3. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions 6 (Safety and Security of Supplies Enquiry Service), 17 (Provision of Services for Persons who are of Pensionable Age, Disabled or Chronically Sick), 18 (Provision of Services for Persons who are Blind or Deaf), 19 (Code of Practice on Procedures with Respect to Site Access), and 21 (Complaint Handling Procedure).
4. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of any modifications that the Authority has indicated, in writing, that it proposes to make to the standard licence conditions prior to the granting of any distribution licence.
5. Provide particulars of the applicant's proposed arrangements for compliance with the applicable requirements of standard conditions BA4 (Undertaking from Ultimate Controller) and BA5 (Credit Rating of Licensee).

#### *RESTRICTION OF A DISTRIBUTION LICENCE*

6. —(1) If the application is for a restriction of a licence provide—
  - (a) an estimate of the total number of premises to which the applicant distributes electricity at the time of the application and to which the applicant would cease to distribute electricity if the application were acceded to (“relevant premises”);
  - (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in paragraph (2)) in relation to the applicant, a description of the applicant's proposed arrangements to ensure compliance with section 16 of the Act (ensuring the connection of all such relevant consumers is maintained); and
- (2) For the purposes of paragraph (1)(b), a person is a relevant consumer if—
  - (a) immediately before the restriction takes effect, he is connected to the distribution system of the holder of the licence; and
  - (b) his premises are to be excluded from the licence by the restriction.

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(a) In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given insofar as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement- (i) with an application made by the applicant in accordance with these Regulations; or (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

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

## PART 3

### FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A SUPPLY LICENCE<sup>(a)</sup>

1. A supply licence may authorise the holder to supply electricity—
  - (a) to any premises;
  - (b) only to premises specified in the licence, or to premises of a description so specified; or
  - (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated (section 6(3) of the Act).

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

#### *RESTRICTION OF A SUPPLY LICENCE*

2. If the application is for a restriction of a licence provide—
  - (a) an estimate of the total number of premises to which the applicant supplies electricity at the time of the application and which the applicant would cease to supply if the application were acceded to; and
  - (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in sub-paragraph (c)) in relation to the applicant, a description of the applicant's proposed arrangements under standard condition 10 (Restriction or Revocation of licence) for—
    - (i) ensuring continuity of supply for all such relevant consumers; and
    - (ii) in the case of each such consumer who is supplied with electricity in pursuance of a contract (which does not include any contract which, by virtue of paragraph 3 of Schedule 6 to the Act, is deemed to have been made), securing such continuity on the same terms as nearly as may be as the terms of the contract.
  - (c) For the purposes of sub-paragraph (b), a person is a relevant consumer if—
    - (i) immediately before the restriction takes effect, he is being supplied with electricity by the holder of the licence; and
    - (ii) his premises are to be excluded from the licence by the restriction.

## PART 4

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

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

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(a) In this Part of this Schedule, if the application is for an extension or restriction of a licence, information and documents need only be given insofar as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement— (i) with an application made by the applicant in accordance with these Regulations; or (ii) subsequent to such an application in pursuance of a condition of the applicant's licence.

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

2. Where an application for a licence relates to an interconnector the construction of which was not completed by 3 August 2003, state whether the applicant seeks not to have applied to the licence any or all of the following standard licence conditions—

- (a) conditions relating to the use of revenues;
- (b) conditions relating to the charging methodology to apply to third party access to the licensee's interconnector;
- (c) conditions relating to the requirement to offer terms to an applicant for access to the licensee's interconnector.

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

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

## SCHEDULE 3

Regulation 7

### APPLICATION FEES

<i>Description of application</i>	<i>Fee payable £</i>
<i>Generation</i>	
1. Application for licence	500
<i>Transmission</i>	
2. Application for licence	500
3. Application for modification of an area	250
<i>Distribution</i>	
4. Application for licence	1400
5. Application for extension or restriction	150
<i>Supply</i>	
6. Application for licence	450
7. Application for any extension or restriction	450
<i>Interconnector</i>	
8. Application for licence	1050

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

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

These Regulations come into force on 1st August 2007. Regulation 1 provides for the citation, commencement and revokes the previous Regulations. Regulation 2 makes transitional provisions for applications made but not determined before these Regulations come into force.

Regulation 3 provides for general interpretation.

Regulation 4 deals with the manner of applications.

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

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

- transmission licences, at Part 1;
- distribution licences, at Part 2;
- supply licences, at Part 3; and
- interconnector licences at Part 4.

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

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



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