

Gas and electricity licence applications - Application Regulations and Guidance Document

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Overview:

This document sets out proposed changes to the Gas and Electricity Application Regulations and our Guidance Document on licence applications.

Following recent changes made to the gas transporter and electricity distribution licences, some changes are required to the Gas and Electricity Application Regulations and our licensing process.

We propose to bring about these changes by repealing the existing Application Regulations and replacing them with new Application Regulations and by replacing our existing published Guidance Document on licence applications.

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Context

1.1. The Gas Act 1986 and the Electricity Act 1989 (together "the Acts") allow the Authority to make regulations which provide a mechanism for those wishing to participate in the gas and electricity markets to obtain a licence¹. There are currently regulations in force (the current Application Regulations²) which have been made under the Acts.

1.2. An EC Directive³ requires the publication of objective and non-discriminatory criteria and procedures for assessing gas licence applications. Since 2002 we have published guidance on licence applications which applies to both gas and electricity.

1.3. In the light of recent changes made to the gas transporter licence as part of the Gas Distribution Price Control Review ("GDPCR") and to the electricity distribution licence as part of the Distribution Licence Review ("DLR"), we need to amend the current Application Regulations and our Guidance Document on licence applications.

Associated Documents

[Gas and electricity licence applications Guidance Document](#). (Ofgem Ref :200/07a).

[Electricity Distribution Licence Review: Conclusions and Statutory Consultation](#) - (Ofgem Ref: 50/08).

[Open letter on Ofgem's proposals to implement revised standards of performance arrangements for gas transporters](#) (Ofgem Ref: 279/07).

[Gas Distribution Price Control Review: Final Proposals Decision and Supplementary Appendices Documents](#) (Ofgem Ref: 285 and 285a/07).

[Offshore Electricity Transmission - A Joint Ofgem/BERR Regulatory Policy Update](#) (Ofgem ref: 84/08)

1. S.7B of the Gas Act 1986 and s.6A of the Electricity Act 1989.

2. The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2007 SI 1971 and the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2007 SI 1972.

3. [Directive 2003/55/EC](#) - Concerning Common Rules for the Internal Market in Natural Gas

Table of Contents

Summary	1
1. Introduction	2
Purpose of this document.....	2
The new Application Regulations.....	2
The Guidance Document.....	2
The Gas Distribution Price Control Review (GDPCR) and the Electricity Distribution Licence Review (DLR)	3
Future reviews	3
Offshore wind and network licences	3
2. Changes to the Application Regulations and the Guidance Document	4
Changes to be made as a result of GDPCR and the DLR.....	4
Compliance arrangements for conditions relating to customer codes of practice	4
Further changes required to the Electricity Application Regulations	5
Compliance arrangements for SLC 8 (Safety and Security of Supplies Enquiry Service).	5
Compliance arrangements for conditions relating to financial ring fencing and alternative arrangements.	5
Changes to be made as a result of amendments to the Companies Act 1985 ..	6
Changes to be made to remedy typographic errors in current Application Regulations	7
Appendices	8
Appendix 1 - Consultation Response and Questions	9
Appendix 2 – The Authority’s Powers and Duties	11
Appendix 3 - Feedback Questionnaire	13

Summary

This document sets out proposed changes to the current Application Regulations⁴ (see draft 'new Application Regulations' in supplementary appendix 1) and the Guidance Document (see supplementary appendix 2) for licence applicants⁵.

In summary the key proposed changes are to:

- remove the requirement for gas transporter licence applicants to submit details of compliance arrangements for conditions relating to customer codes of practice as part of the licence application process ;
- remove the requirement for electricity distribution licence applicants to submit details of compliance arrangements for conditions relating to customer codes of practice as part of the licence application process;
- reflect revised numbering of certain conditions in the electricity distribution licence;
- replace references to definitions of "shadow directors", "undertaking", "parent undertaking" and "subsidiary undertaking" in the Companies Act 1985 with up to date references to definitions in the Companies Act 2006; and
- remedy typographical errors which have come to our attention.

⁴ Existing Application Regulations are [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 \(SI No. 1972\)](#)

⁵ [Gas and electricity licence applications. Guidance document](#). (Ofgem Ref: 200/07a).

1. Introduction

Purpose of this document

1.1. This document sets out the proposed changes we intend to make to the current Application Regulations and the associated Guidance Document for licence applicants.

The new Application Regulations

1.2. The current Application Regulations set out the manner and form in which applications for licences (or modifications of an area or extensions or restrictions of licences) should be made and the fee payable for each type of application. In addition they specify the information that applicants must provide in order for us to consider an application.

1.3. This document sets out proposed changes to the current Application Regulations. The changes proposed primarily relate to the removal of the requirement for gas transporter and electricity distribution licence applicants to submit details of compliance arrangements for conditions relating to customer codes of practice as part of the licence application process. The proposed changes also reflect revised numbering of certain conditions in the electricity distribution licence as a consequence of the DLR.

1.4. Other proposed changes are to update the current Application Regulations to reflect the revocation of certain sections of the Companies Act 1985 and replacement with sections of the Companies Act 2006 and to amend typographic errors.

1.5. We intend to repeal the current Application Regulations and replace these with the new Application Regulations. It is intended that the new Application Regulations will come into force on 1 October 2008.

The Guidance Document

1.6. The draft Guidance Document (see supplementary appendix) sets out the proposed revised procedures that we intend to follow when assessing applications for all types of gas and electricity licences. It also explains the process that follows a proposal to refuse an application for a licence.

1.7. The draft Guidance Document has been updated to reflect changes made as a result of the GDPCR and the DLR.

The Gas Distribution Price Control Review (GDPCR) and the Electricity Distribution Licence Review (DLR)

1.8. Further information and background on the GDPCR and the DLR can be found in the associated documents listed above.

Future reviews

Offshore wind and network licences

1.9. We indicated in our April 2007 document that there may be further changes necessary to the Application Regulations to accommodate the new offshore electricity transmission regime. This regime has developed considerably over the past year, and it is no longer necessary for the current Application Regulations to be amended to reflect these arrangements.

1.10. Offshore electricity transmission licensees will be identified following a competitive tender exercise run by Ofgem, with licences granted to the successful bidder. In June we published a joint regulatory policy update with BERR which set out our updated position regarding the development of a regulatory regime for offshore transmission. The update is listed in the associated documents section above.

1.11. Over the coming year we intend to further review our procedures for assessing Network Licence applications and the application fees to ensure that they continue to be cost reflective.

2. Changes to the Application Regulations and the Guidance Document

This chapter sets out the changes which we propose to make to the current Application Regulations and the Guidance Document

Questions

Question 1: Do you agree with the proposed changes to the current Application Regulations and the Guidance Document?

Question 2: Do you have any additional comments on the content and format of the Guidance Document?

Changes to be made as a result of GDPR and the DLR

Compliance arrangements for conditions relating to customer codes of practice

2.1. The current Application Regulations stipulate that gas transporter licence applicants have to provide details of proposed arrangements for compliance with applicable requirements of the following licence conditions:

- SLC18 (Provisions of Services for Persons who are Blind or Deaf)
- SLC19 (Arrangements in Respect of Powers of Entry)
- SLC19A (Authorisation of Officers)
- 19B (Exercise of Powers of Entry), and
- SLC21 (Complaint Handling Procedure).

2.2. They also stipulate that electricity distribution licence applicants have to provide details of proposed arrangements for compliance with applicable requirements of the following licence conditions:

- SLC17 (Provisions of Services for Persons who are of a Pensionable Age, Disabled or Chronically Sick)
- SLC18 (Provisions of Services for Persons who Blind or Deaf)
- SLC19 (Code of Practice on Procedures with Respect to Site Access), and
- SLC21 (Complaint Handling Procedure).

2.3. Applicants were required to provide these details to the Authority in their codes of practice.

2.4. Following recent licence modifications made as part of the GDPCR⁶ and the DLR⁷, the above conditions have been modified and renumbered in the gas transporters and electricity distribution licences respectively.

2.5. Gas transporter and electricity distribution licence applicants are no longer required to produce codes of practice in relation to these conditions for approval by the Authority. Accordingly, there is no longer a need for the Authority to receive and approve the codes prior to granting a licence.

2.6. Accordingly, we intend to remove the requirement on gas transporter and electricity distribution licence applicants to provide information on proposed arrangements for compliance with these licence conditions.

2.7. In the new Guidance Document we intend to remind applicants that they must comply with the new requirements to publish in plain and intelligible language statements setting out its obligations under the new licence conditions relating to vulnerable customers⁸.

Further changes required to the Electricity Application Regulations

Compliance arrangements for SLC 8 (Safety and Security of Supplies Enquiry Service).

2.8. This condition was previously numbered SLC 6. As part of the DLR, this condition has been renumbered as SLC8 (Safety and Security of Supplies Enquiry Service). We intend to amend the current Electricity Application Regulations to reflect this change in reference.

Compliance arrangements for conditions relating to financial ring fencing and alternative arrangements.

2.9. The current Electricity Application Regulations require an electricity distribution licence applicant to provide particulars of its proposed arrangements for compliance with applicable requirements of any modifications that the Authority has indicated in writing that it proposes to make to the standard conditions prior to the granting of any distribution licence. It also requires applicants to provide particulars of proposed arrangements for compliance with the following proposed amended Standard Conditions:

⁶ [Modification of gas transporter licence pursuant to s23 of the Gas Act 1986.](#)

⁷ [Modification of electricity distribution licences pursuant to s11 of the Electricity Act 1989](#)

⁸ Conditions 9 and 10 of the Electricity Distribution Licence and conditions 17, 18 and 19 of the Gas Transporter Licence.

- BA4 (Undertaking from Ultimate Controller), and
- BA5 (Credit Rating of Licensee).

2.10. The above conditions have been modified as part of the DLR as follows:

- Amended Standard Condition BA4 (Undertaking from Ultimate Controller)
 - this condition has been incorporated into the Standard Conditions of the Distribution Licence and renumbered Standard Licence Condition 31 (Undertaking from Ultimate Controller), and
- Amended Standard Condition BA5 (Credit Rating of Licensee)
 - this condition has not been incorporated into the Standard Conditions of the Distribution licence and will remain an amended Standard Condition. The relevant condition number will be specified as part of any modification which the Authority proposes to make to a given applicants licence.

2.11. We intend to amend the current Electricity Application Regulations to reflect these changes by:

- removing the current specific references to amended Standard Condition BA4 (Undertaking from Ultimate Controller) and BA5 (Credit Rating of Licensee)⁹, and
- inserting a reference to Standard Condition 31 (Undertaking from Ultimate Controller) requiring applicants to provide particulars of proposed arrangements for compliance with this condition.

Changes to be made as a result of amendments to the Companies Act 1985

2.12. The Companies Act 2006 repeals and replaces many of the definitions in the Companies Act 1985, some of these definitions are referred to in the current Application Regulations. Accordingly, references in the current Application Regulations will need to be amended. It is proposed that the following references will be amended:

- shadow director - new reference will be to section 251 of the Companies Act 2006¹⁰
- undertaking - new reference will be to section 1161 of the Companies Act 2006¹¹
- parent undertaking and subsidiary undertaking - new references will be to section 1162 of the Companies Act 2006¹²

⁹ See also, paragraph 2.14

¹⁰ In force April 2008 - [SI 2007/3495](#)

¹¹ In force October 2007 - [SI 2007/2194](#)

¹² In force October 2007 - [SI 2007/2194](#)

Changes to be made to remedy typographic errors in current Application Regulations

2.13. The forms in Schedule 1 and Schedule 2 of the current Application Regulations currently contain footnotes which should correctly be placed in the body of the forms. The substance of the footnotes and their effect remains the same, but it is proposed that the presentation of the footnotes be amended. Some have been placed in regulation 3(1) and the remainder have been placed in the body of the forms.

2.14. It is also proposed to amend regulation 3(3) of the current Application Regulations for accuracy. The drafting of the proposed amendment can be seen in Appendix 1. It is proposed to delete regulation 5 of schedule 2, Part 2 of the current Electricity Application Regulations as this is superfluous, given regulation 4 of that Part. Other minor typographical amendments are also proposed.

Appendices

Index

Appendix	Name of Appendix	Page Number
1	Consultation response and questions	9
2	The Authority's Powers and Duties	11
3	Feedback Questionnaire	13
	Draft Application Regulations 2008	supplementary appendix 1
	Gas and Electricity licence applications - Draft Guidance Document	supplementary appendix 2

Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document. (In particular, we would like to hear from gas and electricity licensees and potential new entrants and consumer groups).

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 3 September 2008 and should be sent to:

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1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish their responses to remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Having considered the responses to this consultation, Ofgem intends to make the proposed changes to the Application Regulations and replace the current guidance on licence applications with the proposed revised Guidance Document. Any questions on this document should, in the first instance, be directed to be directed to Ikbal Hussain on Tel: 020 7901 7049 or by email: ikbal.hussain@ofgem.gov.uk

CHAPTER: Two

Question1: Do you agree with the proposed changes to the current Application Regulations and the Guidance Document?

Question2: Do you have any additional comments on the content and format of the Guidance Document?

Appendix 2 – The Authority's Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.¹³

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly¹⁴.

1.4. The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- The need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- The need to secure that all reasonable demands for electricity are met;
- The need to secure that licence holders are able to finance the activities which are the subject of obligations on them¹⁵; and
- The interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.¹⁶

¹³ entitled "Gas Supply" and "Electricity Supply" respectively.

¹⁴ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

¹⁵ under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- Promote efficiency and economy on the part of those licensed¹⁷ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- Protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity;
- Contribute to the achievement of sustainable development; and
- Secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- The effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- Certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation¹⁸ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

¹⁶ The Authority may have regard to other descriptions of consumers.

¹⁷ or persons authorised by exemptions to carry on any activity.

¹⁸ Council Regulation (EC) 1/2003

Appendix 3 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

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