

## Gas and electricity licence applications - Proposed changes to the Application Regulations and Guidance Document

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

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### **Overview:**

This document sets out proposed changes to the Gas and Electricity Application Regulations which govern the procedures for granting licence applications, as described in our guidance document, Gas and Electricity Licence Applications - Guidance. Most of these changes are proposed in anticipation of the implementation of the EU Services Directive into UK Law via the draft Services Regulations 2009.

We propose to bring about these changes by repealing the current Application Regulations and replacing them with new Application Regulations and also by replacing our current published guidance document on gas and electricity licence applications.

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## Context

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 licence<sup>1</sup>. The regulations currently in force (the "Current Application Regulations"<sup>2</sup>) were made under the Acts in September 2008.

Since 2002 we have published guidance on licence applications which applies to both gas and electricity in accordance with an EC Directive<sup>3</sup> which requires the publication of objective and non-discriminatory criteria and procedures for assessing gas licence applications.

Now, in light of the forthcoming implementation of the EU Services Directive<sup>4</sup> ("the Directive") into UK law via the draft Services Regulations 2009 (the "Draft Regulations")<sup>5</sup>. We need to further amend the Current Application Regulations and our current guidance on licence applications (the "Current Guidance Document")<sup>6</sup> to ensure our application procedures are compliant with the Draft Regulations.

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<sup>1</sup>. S.7B of the Gas Act 1986 and S.6A of the Electricity Act 1989.

<sup>2</sup>. The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2008 SI 2375

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20082375\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082375_en.pdf)

and the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2008 SI 2376

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20082376\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082376_en.pdf)

<sup>3</sup>. Directive 2003/55/EC - Concerning Common Rules for the Internal Market in Natural Gas

[http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&model=guicheti&numdoc=32003L0055&lg=en](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&model=guicheti&numdoc=32003L0055&lg=en)

<sup>4</sup> Directive 2006/123/EC - Services in the Internal Market

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF>

<sup>5</sup> The Services Regulations 2009 (Draft)

<http://www.berr.gov.uk/files/file51286.doc>

<sup>6</sup> Gas and electricity licence applications - Guidance, 1 October 2008

<http://www.ofgem.gov.uk/Licensing/Work/Documents1/LicAppGuidance011008.pdf>

## Associated Documents

- Gas and Electricity Licence Applications - Guidance Document, October 2008.  
<http://www.ofgem.gov.uk/Licensing/Work/Documents1/LicAppGuidance011008.pdf>
  
- EC Services Directive- 2006/123/EC - Services in the Internal Market  
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF>
  
- Services Directive - Draft Services Regulations 2009  
<http://www.berr.gov.uk/files/file51286.doc>
  
- Distributed Energy - Final proposals and Statutory Notice for Electricity Supply Licence Modification (Ref: 08/09), February 2009.  
[http://www.ofgem.gov.uk/Sustainability/Environment/Policy/SmallGens/DistEng/Documents1/DE\\_Final\\_Proposals.pdf](http://www.ofgem.gov.uk/Sustainability/Environment/Policy/SmallGens/DistEng/Documents1/DE_Final_Proposals.pdf)
  
- Electricity Distribution Licence Review: Conclusions and Statutory consultations (Ref: 50/08), April 2008  
[http://www.ofgem.gov.uk/Networks/ElecDist/Policy/Documents1/DLR%20Conclusions\\_letter.pdf](http://www.ofgem.gov.uk/Networks/ElecDist/Policy/Documents1/DLR%20Conclusions_letter.pdf)

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## Summary

This document sets out proposed changes to the Current Application Regulations<sup>7</sup> (see draft 'new Application Regulations' in supplementary appendix 1). It also sets out proposed changes to the Current Guidance Document<sup>8</sup> (see supplementary appendix 2) for licence applicants.

In summary the key proposed changes are to:

- remove the requirement for applicants registered outside of Great Britain to have to provide an address in Great Britain for the service of documents, and to replace this with a requirement for such applicants to provide an email address for the service of documents;
- allow for licence applications to be submitted electronically via the proposed Point of Single Contact website that is currently being developed by the Department for Business Innovation and Skills to help ensure compliance with the Directive;
- remove the requirement for electricity distribution licence applicants to provide a statement of the extent to which (if any) the applicant considers it necessary for powers under Schedule 3 (compulsory acquisition of land etc) and Schedule 4 (other powers) of the Electricity Act 1989 to be given through the licence;
- publish fixed timescales for the time taken to process non-network<sup>9</sup> licence applications; and
- include a requirement for applicants to provide a declaration that no persons specified in the application are disqualified to any extent from acting in connection with the affairs of a company; and
- include a requirement for applicants to provide an extract from the relevant registry in which the country is incorporated confirming the applicant's registration.

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<sup>7</sup> Existing Application Regulations are The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2008 (SI No. 2375).

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20082375\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082375_en.pdf)

and The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2008 (SI No. 2376).

[http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20082376\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082376_en.pdf)

<sup>8</sup> Gas and electricity licence applications - Guidance, 1 October 2008.

<http://www.ofgem.gov.uk/Licensing/Work/Documents1/LicAppGuidance011008.pdf>

<sup>9</sup> Fixed timescales applicable to gas and electricity supply, gas shipper, electricity generation and interconnector licences only.

## 1. Introduction

### Purpose of this document

1.1. This document sets out the changes we propose to make to the Current Application Regulations and the Current Guidance Document for licence applicants.

1.2. It should be noted that the Current Application Regulations and Guidance Document, the proposed new Application Regulations and the updated Guidance Document are not applicable to applications for offshore transmission licences<sup>10</sup>.

### The proposed new Application Regulations

1.3. 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.

1.4. This document sets out proposed changes to the Current Application Regulations. The proposed changes primarily relate to the expected implementation of the Draft Regulations into UK law on 28 December 2009.

1.5. We also propose to further amend the current Electricity Application Regulations by removing the requirement for distribution licence applicants to provide a statement of the extent to which they consider it necessary for certain powers<sup>11</sup> to be given through the licence.

1.6. 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 28 December 2009.

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<sup>10</sup> Applications for an offshore transmission licence (as defined by S.6C(5) of the Electricity Act 1989) shall only be considered or granted by the Authority in accordance with The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009, SI No. 1340. [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091340\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091340_en.pdf)

<sup>11</sup> Under Schedule 3 (compulsory acquisition of land etc) and Schedule 4 (other powers) of the Electricity Act 1989.

## **Proposed updated Guidance Document**

1.7. The Current Guidance Document (see supplementary appendix 2) has been updated to reflect the proposed changes and 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 as well as our proposed approach with respect to tacit authorisation<sup>12</sup>.

## **EU Services Directive and Draft Services Regulations 2009**

### **Background**

1.8. The Draft Regulations are expected to come into force on 28 December 2009. A key objective of the Draft Regulations is to remove barriers to cross-border trade within the EU and make it easier for service providers to establish businesses or offer their services in countries within the EU.

1.9. The key requirements of the Draft Regulations with respect to licence application procedures are set out below.

### **Point of Single contact (PSC) and electronic applications**

1.10. The Draft Regulations require that licence application procedures may be easily completed, at a distance and by electronic means through a Point of Single Contact ("PSC")<sup>13</sup>.

1.11. To that end, we are working with the Department of Business, Innovation and Skills ("BIS"), which is currently developing the PSC website, to ensure that our licence applications may be fully completed by electronic means through the PSC.

1.12. As the PSC website is currently under construction, the exact website address details are not available at this time. We will however update our guidance and the Ofgem website with further details on how to access the PSC when they become available.

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<sup>12</sup> See paragraph 1.13 of this document for further details.

<sup>13</sup> Regulation 39 of the Draft Regulations and Article 8(1), Procedures by electronic means - Directive 2006/123/EC

## **Tacit Authorisation**

1.13. The Draft Regulations provide that licence applications must be processed within a reasonable period from the time when all documentation has been submitted and that the relevant time period for processing applications is fixed and made public in advance. However, the time period may be extended once where it is justified by the complexity of the issue<sup>14</sup>.

1.14. A key significant change which will follow from the implementation of the Draft Regulations is that, where a licence application is not processed within the period set or the extended period, the relevant licence will be deemed to have been granted ("Tacit Authorisation"), unless different arrangements are in place<sup>15</sup>.

1.15. We have considered the risks to consumers and security of supply if any of the different licence types are deemed to have been granted by Tacit Authorisation prior to us completing our assessment of the licence application. We do not currently consider it appropriate for Tacit Authorisation to apply to Network Licences. We propose that different arrangements should apply for Network Licences. The reasons for this are set out paragraphs 2.21 to 2.27 below. We, are however, content for Tacit Authorisation to apply to the other licence types and have set out below the proposed time periods for granting these licences.

## **Other relevant requirements**

1.16. In addition to the above and amongst other things, the Draft Regulations will also require that:

- the procedures for assessing licence applications must be clear, easily accessible and made public in advance, and
- the criteria for assessing licence applications must be objective and non-discriminatory<sup>16</sup>.

1.17. We consider that our current licence application procedures already meet the requirements specified in paragraph 1.15 above. This is because since 2002, we have published (and followed) objective and non-discriminatory criteria for assessing licence applications.

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<sup>14</sup> Regulation 19(3) of the Draft Regulations and Article 13(3), Authorisation procedures - Directive 2006/123/EC.

<sup>15</sup> Regulation 19(5) of the Draft Regulations and Article 13(4), Authorisation procedures - Directive 2006/123/EC.

<sup>16</sup> Regulations 15 and 18 of the Draft Regulations and Article 10, Conditions for granting of authorisation, Directive 2006/123/EC.



## 2. Changes to the Current Application Regulations and the Current Guidance Document

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

### Questions

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

Question 2: Do you consider the requirement for overseas applicants to provide an address in Great Britain for the service of documents to be discriminatory?

Question 3: Do you have any additional comments on the content and format of the Guidance Document?

## Proposed changes to the Current Application Regulations

### **Removing the requirement for applicants registered outside of Great Britain to provide an address in Great Britain for the service of documents.**

2.1. The Current Application Regulations stipulate that licence applicants registered outside of Great Britain must provide an address in Great Britain for the service of documents<sup>17</sup>.

2.2. We do not consider the above requirement to be a particularly onerous additional requirement for applicants registered outside of Great Britain. As stated above, we already follow objective and non-discriminatory criteria for assessing licence applications. The address requirement could, nonetheless, be construed as conflicting with the prohibition in the Draft Regulations on discriminating between companies in different member states based directly or indirectly on the location of its registered office<sup>18</sup>. We would welcome views on this to help inform our decision whether to remove it.

2.3. However if we remove this requirement, it is important to ensure that we maintain the ability to promptly serve documents on an applicant (once they become

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<sup>17</sup> Schedule 1, Paragraph 1(c) of the Current Application Regulations.

<sup>18</sup> Regulation 21 of the Draft Regulations and Article 14, Prohibited requirements - Directive 2006/123/EC.

a licensee) who is registered outside of Great Britain. Clearly, serving documents to an overseas based licensee by post may be subject to delay.

2.4. Should the requirement to provide a postal address in Great Britain for the service of documents be removed, we consider the most appropriate alternative route for serving documents promptly to licensees registered outside of Great Britain would be by electronic mail.

2.5. Accordingly, we have set out a proposed change to the Regulations. If we were to remove the requirement for applicants registered overseas to provide a service address in Great Britain from the Current Application Regulations we could replace this with a requirement for such applicants to provide the relevant email address.

**Include new requirement for applicants to provide a statement on disqualification and extract from relevant Registry.**

2.6. It is important to ensure that an applicant company is registered with Companies House or, in the case of an overseas company, with the relevant registry in that country. We also consider it important to ensure that any persons specified in the application are not subject to disqualification to any extent from acting in connection with the affairs of the applicant.

2.7. We can check whether a UK applicant is registered and whether any of its directors are listed as being disqualified relatively easily using the Companies House website. Where the applicant is registered outside of the UK, information from corresponding registries in other jurisdictions is not always easily accessible.

2.8. We therefore propose to include a requirement for all applicants to provide the following:

- a statement confirming that no persons specified in the application are disqualified to any extent from acting in connection with the affairs of a company; and
- an extract from the relevant registry in which the company is incorporated as a means of confirming its registration in that registry.

## Further changes required to the Electricity Application Regulations

### **Removing the requirement for electricity distribution licence applicants to make a statement regarding the need for powers under Schedule 3 (compulsory acquisition of land etc) and Schedule 4 (other powers) of the Electricity Act 1989.**

2.9. The current Electricity Application Regulations require electricity distribution licence applicants to provide a statement of the extent to which (if any) the applicant considers it necessary for powers under Schedule 3 (compulsory acquisition of land etc) and Schedule 4 (other powers) of the Electricity Act 1989 to be given through the licence in respect of which the applicant is applying.

2.10. Following the Distribution Licence Review("DLR")<sup>19</sup>, the statutory powers under Schedule 3 and 4 of the Act now have effect in the licence. This is as a result of Standard Licence Condition 28 (Application of statutory powers) of the standard conditions now being applicable to all electricity distribution licences. (SLC 28 is contained within Section A of electricity distribution licences).

2.11. As there is no longer a need for electricity distribution licence applicants to state whether they require the powers under Schedule 3 and 4 of the Electricity Act 1989 (the powers will be given by virtue of SLC 28), we propose that the obligation to provide such a statement in the Electricity Application Regulations is removed.

## Proposed changes to our Current Guidance Document on licence applications

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

2.12. We are aware that in some cases where we have requested additional information or clarification, some licence applicants take a considerable amount of time to respond.

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<sup>19</sup> Electricity Distribution Licence Review: Conclusions and statutory consultations, (Ref: 50/08) 29 April 2009.  
[http://www.ofgem.gov.uk/Networks/ElecDist/Policy/Documents1/DLR%20Conclusions\\_letter.pdf](http://www.ofgem.gov.uk/Networks/ElecDist/Policy/Documents1/DLR%20Conclusions_letter.pdf)

2.13. Such delays mean that in some cases, licence applications (particularly network licence applications) take far longer to process than they actually need to. To that end, we intend to amend the Current Guidance Document to make clear that:

- where further information or clarification is required from applicants, we will agree timescales with individual applicants within which we expect the information to be submitted;
- failure to adhere to these agreed timescales may lead to a licence application being refused; and
- we do not expect any licence application to remain in progress for more than 1 year from the date it was acknowledged as a duly made application. Applications still pending after this time may be refused and the applicant asked to re-apply should they wish to do so.

### **Gas and electricity supply, gas shipper and electricity generation licence applications**

2.14. Our Current Guidance Document states that our target is to grant 90% of such applications within 8 weeks of receipt of a duly made<sup>20</sup> application that includes all necessary supporting documentation and information. We propose to revise this time period to granting all such licences within 45 working days of receipt of a duly made application.

2.15. However, as stated below, it should be noted that this 45 working days time period may need to be extended where the application raises policy or consumer protection issues that require additional consideration. It may also need to be extended where the applicant has requested modifications to any applicable standard conditions.

### **Interconnector licence applications**

2.16. The Current Guidance Document does not specify a time period for granting interconnector licences.

2.17. We propose to amend the Current Guidance Document to include interconnector licences in our revised target of granting certain types of licences within 45 working days of receipt of a duly made application.

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<sup>20</sup> An application that is properly completed in the form and manner specified in the Application Regulations.

2.18. We also propose to amend the Current Guidance Document to make clear that the actual licence application and any request for exemption from relevant conditions relating to third party access and certain other requirements<sup>21</sup> will be treated as two separate processes.

2.19. For the avoidance of doubt this means that, for interconnector licence applications, the time period of 45 working days applies to any decision to grant the licence only and does not apply to any decision relating to exemption from relevant conditions in respect of third party access and certain other requirements.

2.20. Indeed, any decision on exemptions from these licence conditions is likely to take considerably longer due to the need for additional consultation and need for detailed consideration of such requests by Ofgem and the European Commission.

### **Extensions to published time periods for the grant of gas and electricity supply, gas shipper, electricity generation and interconnector licence applications**

2.21. A licence application may, amongst other things, raise policy or consumer protection issues that require additional consideration. In such instances, we may require additional time to properly consider the issues and, where necessary, carry out a public consultation and consider any responses to that consultation, prior to granting a licence.

2.22. In cases where an applicant has requested modifications be made to any of the standard conditions of the licence being applied for, we are required to consult on the proposed modifications<sup>22</sup>.

2.23. It is very likely that in such instances any specified time period will need to be extended to allow time for additional considerations and/or, where appropriate, consultation before a decision on whether to grant or refuse the licence application can be made. Hence, in accordance with the Draft Regulations, in all such cases we propose to contact the applicant as soon as reasonably practicable after receipt of the application or as soon as reasonably practicable after any issues are identified to extend the time period.<sup>23</sup> This will allow sufficient time for us to properly consider the issues and consult where we deem it appropriate or are required<sup>24</sup> to do so.

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<sup>21</sup> SLC 9, 10 and 11 of the Electricity Interconnector Licence and SLC 10 and 11 of the Gas Interconnector licence.

<sup>22</sup> s8A(3) of the Electricity Act 1989 and s8(4) of the Gas Act 1986 require us to consult before making modifications to a licence on grant.

<sup>23</sup> The relevant specified time period for granting a licence of the type applied for.

<sup>24</sup> For example, s8A(3) of the Electricity Act 1989 and s8(4) of the Gas Act 1986 require us to consult before making modifications to a licence on grant.

## **Network licence applications (gas transporter, electricity distribution and transmission<sup>25</sup>)**

2.24. It should be noted that before granting a gas transporter or electricity transmission licence we are required to publish a notice<sup>26</sup> stating that we propose to grant the licence, the reasons why we propose to grant the licence, and specifying the time within which any objections or representations may be made.

2.25. Also, unlike other licence types, network licences are issued to licensees that may currently have monopoly interests in the gas or electricity network they own and operate.

2.26. In order to protect consumers it is therefore vital that, where appropriate, sufficiently robust arrangements are in place prior to granting a licence. If arrangements are not robust, the protection of consumer interests and security of supply may be placed at risk.

2.27. The importance of network licensees to consumers and security of supply is further reflected by the "Protected Energy Company" status that such licensees are given under the Energy Act 2004<sup>27</sup>.

2.28. In light of the above we do not consider it appropriate for Tacit Authorisation to apply to network licence applications or for network licences to be deemed to have been granted, prior to us being satisfied that sufficiently robust arrangements are in place to protect consumer interests.

2.29. We therefore propose that different arrangements<sup>28</sup> should apply for network licence applications and propose to continue to assess network licence applications in the same way that we currently do<sup>29</sup>.

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<sup>25</sup> Not applicable to applications for offshore transmission licences as defined by s6C(5) of the Electricity Act 1989.

<sup>26</sup> s7(5) of the Gas Act 1986 and s6B(3) of the Electricity Act 1989. The notice period is not less than 2 months for gas transporter applications and not less than 28 days for electricity transmission licence applications.

<sup>27</sup> s154 of the Energy Act 2004

<sup>28</sup> Regulation 19 of the Draft Regulations and Article 13(4) of the Directive allows for different arrangements to apply (instead of Tacit Authorisation) where it is justified and in the public interest. Recital 40 of the Directive lists amongst other grounds, the protection of the recipients of the services, consumer protection and public security.

<sup>29</sup> In accordance with criteria set out in the Current Guidance Document

2.30. Accordingly, unlike the other licence types we do not propose to specify a time period for granting network licences and intend to continue with the current practice of granting such licences as soon as reasonably practical after all relevant information has been provided and assessed and all relevant requirements have been satisfied.

2.31. However as mentioned above, it should be noted that we do not expect any licence application to remain in progress for more than 1 year from the date it was acknowledged as a duly made application.

2.32. Where further information or clarification is required from applicants, we will agree timescales with individual applicants within which we expect the information to be submitted and failure to adhere to these agreed timescales may lead to a licence application being refused.

### **Updating the Current Guidance Document in light of modifications made to SLC 11 (Compliance with codes)**

2.33. In March 2009, as part of our work on identifying and reducing the regulatory barriers to the development of Distributed Energy (DE), we modified Condition 11 (Compliance with codes) of the standard conditions applicable to electricity supply licences.

2.34. The modification allows existing and prospective electricity supply licensees to apply to the Authority for a direction under SLC 11.3 of the electricity supply licence relieving it of certain obligations (in whole or in part) to comply with specified industry codes.

2.35. In February 2009 we publish guidance<sup>30</sup> setting out the information that must be provided by electricity supply licence applicants seeking a direction under SLC 11.3. The guidance also explains the criteria we will use to assess the information provided.

2.36. We propose to amend the Current Guidance Document in order to refer those seeking a direction under SLC 11.3 to this published guidance.

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<sup>30</sup> Appendix 3 of Distributed Energy - Final proposals and Statutory Notice for Electricity Supply Licence Modification (Ref: 08/09), February 2009.  
[http://www.ofgem.gov.uk/Sustainability/Environment/Policy/SmallrGens/DistEng/Documents1/DE\\_Final\\_Proposals.pdf](http://www.ofgem.gov.uk/Sustainability/Environment/Policy/SmallrGens/DistEng/Documents1/DE_Final_Proposals.pdf)

## Appendices

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## 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 11 November 2009 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](http://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 will decide what steps it should take next, and in particular, whether to make the changes proposed in this consultation.

1.7. Any questions on this consultation 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](mailto: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 consider the requirement for overseas applicants to provide an address in Great Britain for the service of documents to be discriminatory?

Question 3: 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 UK statute (such as the Gas Act 1986, Electricity Act 1989, Competition Act 1998, Utilities Act 2000, Enterprise Act 2002 and Energy Acts of 2004 and 2008) 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.<sup>31</sup> 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 accordingly.<sup>32</sup>

1.3. 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, existing 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.

1.4. 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 them;<sup>33</sup>
- the need to contribute to the achievement of sustainable development;<sup>34</sup> and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.<sup>35</sup>

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<sup>31</sup> Entitled "Gas Supply" and "Electricity Supply" respectively.

<sup>32</sup> 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.

<sup>33</sup> 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.

<sup>34</sup> This obligation was introduced by the Energy Act 2008 with effect from 26 January 2009. See below for more details.

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1.5. 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 licensed<sup>36</sup> 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; and
- secure a diverse and viable long-term energy supply.

1.6. In carrying out these functions, 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.

1.7. 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 Britain. The Authority is a designated National Competition Authority under the EC Modernisation Regulation<sup>37</sup> and is 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.

### **The Energy Act 2008**

1.8. The Energy Act 2008 modified the general duties of the Authority in carrying out its functions under the Gas Act and the Electricity Act.

1.9. When carrying out its functions in the manner which it considers is best calculated to further its principal objective, the Authority must now do so by having regard to the need to contribute to the achievement of sustainable development equally with the need to have regard to the need to secure that all reasonable

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<sup>35</sup> The Authority may have regard to other descriptions of consumers.

<sup>36</sup> Or persons authorised by exemptions to carry on any activity.

<sup>37</sup> Council Regulation (EC) 1/2003.

demands for electricity and gas are met and that licensees are able to finance their regulated activities.

1.10. It has also been highlighted within the text of the principal objective that the Authority's consideration of the interests of consumers includes both future as well as existing consumers.

1.11. The Authority already takes account of sustainable development in its decisions but the changes mean that increased weight is attached to such considerations.

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## 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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