



Gas and electricity licensees,
potential new entrants, consumer
groups and any other
interested parties.

*Promoting choice and
value for all customers*

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Dear Colleague

The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2009 and the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2009

On 3 December 2009, the Authority made amendments to the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2008¹ and the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2008² (the "2008 Licence Application Regulations") in the form of new 2009 Statutory Instruments.

The Office of Public Sector Information (OPSI) will shortly be publishing the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2009³ and the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2009⁴ (the "2009 Licence Application Regulations"). The Regulations 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 for the different licence types.

This letter is to notify you that the 2009 Licence Application Regulations will apply from 28 December 2009. This letter also provides a background to the process we undertook to make the amendments to the 2008 Licence Application Regulations. Please note that we have today published a revised version of our Guidance Document⁵ which accompanies the 2009 Licence Application Regulations.

Introduction

On 14 October 2009 we published a consultation document⁶ setting out proposed changes to the 2008 Licence Application Regulations and consequential changes to our accompanying Guidance Document⁷ on licence applications.

¹ 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

² 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

³ The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2009 SI No. 3191.

⁴ The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2009 SI No. 3190.

⁵ Gas and electricity licence applications, Guidance document, 17 December 2009 (coming into force 28 December 2009)

⁶ Gas and electricity licence applications - Proposed changes to the Application Regulations and Guidance Document Ref: 124/09

Most of the proposed changes are required as a consequence of the implementation of the EU Services Directive⁸ into UK Law via the Provision of Services Regulations 2009⁹ coming into force 28 December 2009 (the "Services Regulations"). In summary the key changes that we consulted on were to:

- 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 Services Regulations;
- 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 if the GB service address requirement was considered to be discriminatory; and
- publish fixed timescales for the time taken to process non-network¹⁰ licence applications.

We also took the opportunity to propose additional changes to the Application Regulations for clarification and to improve our existing procedures. In summary the additional changes were to:

- make clear that the Electricity Application Regulations do not apply to applications for an off-shore transmission licence;
- inserting an updated reference to amended standard condition BA3 (Credit Rating of the Licensee) in Part 2 of Schedule 2 to the Electricity Licence Application Regulations. This is to formalise existing requirements for distribution licence applicants to provide details of proposed arrangements with respect to amended standard condition BA3;
- 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;
- include a requirement for applicants to provide an extract from the relevant company registry, in which the applicant is registered in its country of incorporation, confirming the applicant's registration; and
- 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 as this is no longer necessary following recent changes to the distribution licence.

Respondents' views

We received one response to the consultation. A copy of the response has been published with this letter. The respondent was generally supportive of the proposed changes but expressed some reservations with the proposal to remove the requirement for applicants registered outside of Great Britain to have to provide an address in Great Britain for the

⁷ Gas and electricity licence applications, Guidance document, 1 October 2008:

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

⁸ 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>

⁹ The Provision of Services Regulations 2009, SI No 2999

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092999_en.pdf

¹⁰ Fixed timescales applicable to gas and electricity supply, gas shipper, electricity generation and interconnector licences only.

service of documents and to replace this with a requirement for such applicants to provide an email address for the service of documents. The respondent believes the proposed change may compromise the effectiveness of the service of documents as, in that respondent's view, emails are transitory in nature and may be easily overlooked. The respondent suggests an alternative approach could be to allow for an address within the EU to be given and service of documents to such addresses be effected by mail or courier service.

Ofgem's decision

We requested views in our consultation on whether respondents considered that the current requirement that an applicant registered outside of GB provide a GB address for service of documents conflicted with the requirement under regulation 21(1)(a) of the Services Regulations. That provision provides that the Authority must not make access to, or the exercise of, a service activity subject to discriminatory requirements based on the location of registered office. We received no responses that this requirement does indeed conflict.

We have considered the matter further and, on balance, we do not think that this requirement is in conflict with regulation 21(1)(a) of the Services Regulations because in our view:

- it does not prohibit applicant companies who are based outside of the UK from applying for a licence, being awarded a licence or carrying out a licensable activity in the UK;
- it does not require applicant companies to be registered in the UK, or require them to have a registered office or principal office in the UK, to enable them to apply for a licence, be awarded a licence or carry out a licensable activity in the UK;
- it does not require applicant companies, their staff, members of management, shareholders or supervisory bodies to be resident in the UK to enable them to apply for a licence, be awarded a licence or carry out a licensable activity in the UK.

As stated in our consultation, we do not consider the above requirement to be a particularly onerous requirement for applicants registered outside Great Britain and we already follow objective and non-discriminatory criteria for assessing licence applications.

We therefore have not made the proposed amendment to remove the requirement for a service address and replace this with a requirement to provide an email address for the service of documents.

Additional minor changes

In addition to the above, we have identified the need to make some additional minor changes to the 2008 Licence Application Regulations:

- firstly, we have updated references to the Companies Act in the definition of "Ultimate holding company",
- secondly, for greater clarity, we have slightly amended the proposed wording with respect to the requirement for applicants to provide an extract from the relevant company registry, and
- finally, we have also removed the title "non-application to offshore transmission licences" from Regulation 3 of the Electricity Licence Application Regulations as it is not required and not in accordance with the OPSI Statutory Instrument template.

We consider the above changes to be minor consequential changes that do not necessitate additional consultation.

The 2009 Licence Application Regulations will shortly be available from the OPSI website at <http://www.opsi.gov.uk/stat>

If you have any comments or questions in relation to this letter please contact Ikbal Hussain on 020 7901 7049 or by email to Ikbal.Hussain@ofgem.gov.uk.

Yours faithfully,

Mark Cox
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