

Supplementary Appendix 2 - Draft guidance for gas and electricity licence applications

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

Overview:

This document sets out our draft guidance on licensable activities and how to apply for licences, extensions, restrictions, modifications of areas and transfers of existing licences. Subject to responses to our consultation on changes to the licence application regulations we intend to issue this guidance alongside revised regulations.

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Context

We have published objective and non-discriminatory criteria and procedures for assessing gas and electricity applications since 2002. This is in accordance with a requirement of an EU Directive¹.

This is the latest version of our guidance, which takes into account the outcome of a recent review of our licensing processes as summarised below.

The central change to the application process is a shift from the current 'one size fits all process' for assessing licence applications, to a new risk based, three tier application process:

- Tier 1 - Information to be provided by all applicants.
- Tier 2 - Additional information and evidence to be provided on request by Ofgem.
- Tier 3 - Review of original identification documents and interview with Ofgem.

The tiered application process facilitates the expedient processing of bona fide applications, while filtering out for further scrutiny any applications that potentially:

- contain unexplained omissions, discrepancies, or misstatements of fact; and/or
- demonstrate no clear intention to actually use the licence to carry out the licensable activity within a reasonable period, if at all.

Where an application is moved to Tier 2 and/or Tier 3, the applicant may be requested to provide additional information and documentation in support of its licence application.

We have also changed the format of the Application Regulations to make the current questions, which form the basis of the application, into a more explicit application form and changed the language throughout, with a greater use of plain English. These changes have mainly been driven by feedback from users of the previous application process.

¹ 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

Associated Documents

- 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>
- The Provision of Services Regulations:
- http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092999_en.pdf
- Electricity and gas interconnector licence - Guidance Document, April 2005:
- http://www.ofgem.gov.uk/Licensing/Work/Archive/11162_12105.pdf
- 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
- The Application Regulations for gas:
[Link]
- The Application Regulations for electricity:
[Link]

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Summary

This Guidance Document sets out how to make applications for gas and electricity licences. It also tells you what happens if we refuse a licence application. It should be noted that this Guidance Document is not applicable to applications for offshore transmission licences².

If we take steps which differ from this guidance, we will explain our reasoning.

Important points to note include:

- Provision of incorrect information during the licensing application process is an offence and may result in criminal proceedings being instituted under section 43 of the Gas Act 1986 (as amended) or section 59 of the Electricity Act 1989 (as amended). It may also result in your application being refused or, if discovered after a licence has been granted, in your licence being revoked.
- Licensees are obliged to comply with various industry codes. Please contact the relevant code administrator to discuss becoming a code party and compliance as soon as possible. Details of codes and code administrators can be found on our website at:
<http://www.ofgem.gov.uk/LICENSING/ELECCODES/Pages/ElecCode.aspx> (for electricity codes) and
<http://www.ofgem.gov.uk/Licensing/GasCodes/Pages/GasCodes.aspx> (for gas codes).
- This document is not a definitive interpretation of the law. It is not to be taken as a substitute for the Acts, Statutory Instruments and other legal material referred to below.
- We cannot offer legal advice on interpretation, on the type of licence you might need, or on whether you benefit from an exemption or exception. We suggest you seek your own legal advice.
- You must comply with ALL of the terms and conditions of your licence from the day it is granted. This includes the standard licence conditions ("SLC") applicable to the type of licence you have applied for. These can be viewed on our electronic Public Register ("e-PR") at
<http://epr.ofgem.gov.uk/index.php?pk=folder100991>.

² Applications for an offshore transmission licence (as defined by s6C(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

- Please note that being granted a licence does mean that we have given any endorsement to the applicant or any associated person, their financial status or their business plan or methods. We do not give any guarantee or warranty that the licensee or any related person is 'fit and proper'. By applying to us for a licence you agree that the applicant and any related persons agree not to make any representations to the contrary.

1. Introduction and Background

Reading this document

1.1. This document should be read before you start to fill out your application for a new licence or an application for the extension or restriction of an existing licence³.

1.2. You should read this document in conjunction with the application form in the relevant application regulations:

- Gas: xxx
- Electricity: xxx

1.3. Copies of the application form can also be downloaded from the 'Industry Governance' section of the Ofgem website: www.ofgem.gov.uk

1.4. Our application form is the minimum you will have to provide as an applicant. Further questions may arise from the information you provide, the results of our checks on your information, and/or any comments received from other teams within Ofgem or third parties.

1.5. 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.

1.6. If you have any queries that are not answered in this document, please refer to the 'Industry Governance' section of our website. If this does not answer your question, please send an e-mail to licensing@ofgem.gov.uk. We aim to respond to queries sent to this inbox within 3 working days. If you feel that your question has still not been answered, please call us on 020 7901 7000.

Licensing and our principal objective

1.7. In dealing with applications for licenses, we comply with our principal objective⁴. This is to protect the interests of existing and future consumers. These interests include the reduction of greenhouse gas emissions and security of supply. We will, carry out our functions in the manner considered best calculated to further the

³ Extension and restriction applications only apply to supply, gas transportation and electricity distribution licence applications. Existing transmission licence holder may also make an application for the Modification of an Area of a transmission licence.

⁴ s.4AA of the Gas Act 1986 and s. 3A of the Electricity Act 1989.

principal objective, where appropriate, by promoting effective competition. Before promoting competition, we will consider the extent to which the interests of consumers would be protected by that manner and whether consumers' interests would be better protected in another manner.

1.8. In complying with our principal objective, we will consider the need to:

- secure that licensees can finance their activities which are the subject of obligations under the Energy Act 2010, the Energy Act 2008, the Energy Act 2004, the Utilities Act 2000 or, as the case may be, the Gas Act or the Electricity Act;
- secure that, all reasonable demands for gas and electricity are met;
- contribute to the achievement of sustainable development; and,
- have regard to the interests of particular customer groups, such as those with a disability, or those who are chronically sick.

1.9. Our application process also takes into account:

- 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 applicants' to enter the GB energy market, including those based outside of Great Britain.

Licensable activities

1.10. The Gas Act 1986 (as amended) (the "Gas Act") and the Electricity Act 1989 (as amended) (the "Electricity Act") (referred to below as the "Acts") make it an offence to carry out certain activities unless you hold a licence, or are exempt from this requirement⁵. We grant licences to carry out these activities⁶.

⁵ S.5 of the Gas Act and s.4 of the Electricity Act.

⁶ s.7 and 7A of the Gas Act and s.6 of the Electricity Act.

1.11. These activities include:

Gas:

Type of Licence	Licensable activity permitted under the Gas Act 1986	Any licences that cannot be held in conjunction
Transporter (GT) ⁷	Allows the licensee to convey gas through pipes to premises, or to another system of pipelines operated by another GT. Companies conveying gas must be licensed. The licence allows the GT to: <ul style="list-style-type: none"> • convey gas through pipes to any premises within an area authorised by the licence; or • convey gas through pipes to any pipe-line system operated by another GT, or other pipe-line system specified in the licence. 	Any other type of gas licence
Interconnector ⁸	Allows the licensee to participate in the operation of a gas interconnector which is defined as: <ul style="list-style-type: none"> • 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 gas⁹. 	Any other type of gas licence
Shipper ¹⁰	Allows the licensee to arrange with a GT for gas to be introduced into, conveyed through, or taken out of a pipeline system operated by that GT. In all instances, the purpose of the gas movement should be general or for purposes connected with the supply of gas to premises.	Gas Transporter Gas Interconnector
Supplier ¹¹	Allows the licensee to supply to any premises gas, which has been conveyed to those premises through pipes. A gas suppliers licence can allow for supply to either:	Gas Transporter Gas Interconnector

⁷ S.7(2) of the Gas Act and SLC 43 (Restriction on activity and financial ring fencing) of the Gas Transporter licence and standard special condition A36 of the of the gas transporter licences' held by gas distribution networks.

⁸ S.7ZA of the Gas Act.

⁹ S.5(6) of the Gas Act.

¹⁰ S.7A(2) of the Gas Act.

	<ul style="list-style-type: none"> • domestic and non-domestic premises, or • non-domestic premises only. 	
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Electricity:

Type of Licence	Licensable activity permitted under the Electricity Act 1989	Any licences that cannot be held in conjunction
Generation ¹²	Allows the licensee to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be given.	Electricity Interconnector
Transmission ¹³	Allows the licensee to participate in the transmission of electricity for the purpose of enabling a supply to be given.	Any other type of electricity licence
Interconnector ¹⁴	Allows the licensee to participate in the operation of an electricity interconnector. Participating in the operation on an electricity interconnector is defined as: <ul style="list-style-type: none"> • 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. 	Any other type of electricity licence
Distribution ¹⁵	Allows the licensee to distribute electricity for the purpose of enabling a supply to be given. Electricity is distributed from the National Grid Network through a low voltage network of wires to customers.	Any other type of electricity licence
Supply ¹⁶	Allows the licensee to supply electricity to premises. An electricity supply licence can be for supply to either: domestic ¹⁷ and non-domestic premises, or non-domestic premises only.	Electricity Distribution Electricity Interconnector

¹¹ S.5(1) of the Gas Act.

¹² S.6(1)(a) of the Electricity Act.

¹³ S.6(1)(b) of the Electricity Act . and SLC B6 (Restriction on activity and financial ring fencing) of the Electricity Transmission licence

¹⁴ S.6(1)(e) of the Electricity Act.

¹⁵ S.6(1)(c) of the Electricity Act and SLC 29 (Restriction on activity and financial ring fencing) of the Electricity Distribution Licence for Distribution Network Operators (DNOs) and amended condition BA2 for Independent Distribution Network Operators (IDNOs)

¹⁶ S.6(1)(d) of the Electricity Act.

¹⁷ Domestic premises are premises used wholly or mainly for domestic purposes.

Exemptions and exceptions

Exemptions from requiring a licence

1.12. The Acts allow the Secretary of State to make orders giving exemptions from the need to hold licences.

1.13. This means that some activities that fall within the definitions of a licensable activity are, in fact, exempt from the need to hold licences.

1.14. Exemptions can apply to individual cases or can be on the basis of a class (type) of activity. Exemptions when granted can be unconditional or subject to certain conditions including length of time.

1.15. Exceptions from requiring a licence

1.16. Schedule 2A of the Gas Act sets out exceptions to the need for licences. It is for the applicant to ascertain whether the proposed activity falls within the scope of an exception.

1.17. Advice on Exemptions and Exceptions

1.18. Ofgem cannot under any circumstances comment on whether a person carrying on an activity or proposing to carry on an activity will be exempt or excepted from the requirement to hold a licence. It is for the person carrying on, or proposing to carry on, an activity to decide whether they require a licence or benefit from an exemption or exception.

1.19. Please contact the Department for Energy and Climate Change (DECC) if you wish to discuss the exemption orders. The relevant Gas and Electricity exemption orders may be downloaded from our e-PR:

<http://epr.ofgem.gov.uk/index.php?pk=folder136655>.

2. Application Process for new licences and the extension or restriction of existing licences.

How to apply

General information

2.1. Applications for a new licence, or for the extension or restriction of an existing licence¹⁸ should be made using the application form available via our website at [Link to be inserted once new regulations published]

2.2. The application form may also be used to provide the information required to transfer an existing licence.

2.3. Every applicant must answer all of the questions in Tier 1 (including the relevant licence specific information which relates to the type of licence you want).

2.4. If your answer would be none, or you feel that a question does not apply to you, please write 'none' or 'N/A' in response as appropriate. If you leave any questions unanswered, this will delay your application as we will have to check your answer with you.

2.5. Please ensure that you include copies of the documents requested in the application form when you send it to us. Failure to provide this will delay your application.

When to apply

2.6. We suggest that you only apply when you are getting close to being ready to carry out a licensable activity. This is because we can revoke a licence if you have not commenced the relevant licensable activity within a certain time¹⁹. However, please note the timescales below concerning processing of applications when considering when to make your application.

¹⁸ Extension and restriction applications only apply to supply, gas transportation and electricity distribution licence applications. Existing transmission licence holder may also make an application for the Modification of an Area of a transmission licence.

¹⁹ 1 year from the date on which the licence came into force.

Where to send applications to

2.7. If you are using the application form available on our website, please send your complete application to licensing@ofgem.gov.uk or alternatively send a hard copy by post to 9 Millbank, London SW1P 3GE.

How and what to pay

2.8. Payments can be made in either of the following ways:

2.9. Payment by BACS or CHAPS to:

Bank: Citibank, 25 Canada Square, Canary Wharf, London E14 5LB

Account Name: GBS Re Ofgem

Account Number: 12316110

Sort Code: 08-33-00

Swift code: CITIGB22

IBAN: GB40CITI08330012316110 , OR

2.10. Payment by cheque payable to GBS Re Ofgem.

2.11. The amount you will need to pay depends on the type of licence you want.

Description of application	Fee payable £
Supplier (gas and electricity)	
1. Application for a gas or electricity 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 a gas licence including authorisation to supply gas to premises to which gas is, or is to be, conveyed otherwise than by a gas transporter (gas only)	350
3. Application for any extension or restriction	450
Shipper	
4. Any application	350
Transporter	
5. Application for licence	1050
6. Application for extension or restriction	150
Interconnector	
7. Application for licence	1050
Generation	
8. Application for licence	500
Distribution	
9. Application for licence	1400
10. Application for any extension or restriction	150
Transmission	
11. Application for licence	500
12. Application for the modification of an area	250

2.12. If you pay by CHAPS or BACS, please send us confirmation of the method and date of payment together with details of the account number and sort code of the account you sent the money from.

2.13. Please note that if we do not receive a cleared payment from you, we may cancel the application. If we intend to do this we will contact you and give you 7 days notice (for example by e-mail). If we cancel your application and you still want a licence you will have to re-apply.

What happens next?

Application acknowledgement

2.14. We will write to you to confirm receipt of your licence application.

2.15. We will then check your application to ensure that all of Tier 1 (including the licence specific section) have been filled out and that copies of the requested documents have been provided together with payment.

Duly made or incomplete application notification

2.16. Once your payment has cleared our accounts²⁰ we will write to you again saying one of two things, either that your application is:

- provisionally considered complete and duly made, subject to any notification by us to the contrary at any time during the assessment of your application; or
- incomplete - in which case, we will also set what information/documentation we require before we can start to process your application.

2.17. To ensure efficiency of process, we will not begin to assess applications until an application has been provisionally confirmed as being complete and duly made.

Notice of application

2.18. Where an application is acknowledged as provisionally duly made we will send you a template of the application notice which must be published for applications for licences, extensions or restrictions. Examples of application notices can be seen on our website at:

<http://www.ofgem.gov.uk/Licensing/Work/Notices/AppNotices/Pages/Applications.aspx>.

2.19. You must complete, sign and date the notice and return it to us within 10 days. When you send us the notice, please tell us whether you would like us to publish it on our website, or whether you intend to publish it on your website. If you choose to publish it yourself you must provide us with a URL for where you have published it, so that we can place a link on our website.

2.20. If you are applying for a restriction, you must also publish notice in such newspapers as are best calculated to circulate it throughout the area affected by the proposed restriction.

²⁰ Where no payment has been made, the application is considered incomplete and we will write to you to confirm that the application is incomplete.

2.21. If you fail to send us the completed notice within 10 days, your application may be cancelled. This would mean that if you still wanted a licence, you would have to re-apply and start the process again.

How long does the application process take?

2.22. We aim to reach a decision on whether to grant a licence in 100% of cases for the following types of application within 45 working days²¹ of acknowledging the application as 'duly made' (the "Time Period"):

- Supply (gas and electricity);
- Shipper;
- Generation; and,
- Interconnector (gas and electricity).

2.23. The Time Period commences on the first working day after notice of a 'duly made' application is sent (i.e. the first working day after the date on the letter or e-mail confirming that your application is 'duly made'). The Time Period will end at close of business on the 45th working day.

Tacit Authorisation

2.24. The licence²² will be deemed to have been granted by tacit authorisation on the 46th working day if no decision is made within the Time Period. Please note that any licence deemed to have been granted is on the same terms and conditions as those expressly granted. In other words, the same terms, conditions and schedules (including but not limited to the relevant SLC and revocation schedules) apply to a deemed licence as an expressly granted licence as that type of licence would be usually granted.

2.25. The Time Period does not apply to applications for gas transportation, electricity transmission or distribution licences or to applications where modifications have been requested. Nor does it apply, in the case of applications for electricity supply or interconnector licences, to any decision on whether to issue a direction under SLC 11.3 of the electricity supply licence or exemptions from certain conditions of gas and electricity interconnector licences²³.

2.26. The Time Period may need to be extended, for example if the application:

²¹ 45 working days Time Period to reach a decision on whether or not to grant a licence.

²² In accordance with Regulation 19(5) of the Provision of Services Regulations 2009 and Article 13(4) of the EU Services Directive 2006/123/EC.

²³ SLC 9, 10 and 11 of the Electricity Interconnector licence and SLC 10 and 11 of the Gas Interconnector licence.

- raises significant policy or consumer protection issues that require careful consideration; or,
- has requested modifications be made to the licence on grant²⁴ to any of the SLCs. We are required to consult on proposed modifications²⁵.

2.27. It's likely that in such instances the Time Period will need to be extended to allow time for additional considerations and/or consultation²⁶ before a decision on whether to grant or refuse the licence application can be made.

2.28. In all such cases, we will contact you as soon as reasonably practicable after it becomes apparent that the Time Period is likely to need extending to confirm the extension.

Requests for information and documents and the Time Period.

Prior to provisional notification that your application is considered duly made

2.29. We will set out what additional information or documents are required. We will give you a deadline for providing this information (which may be agreed with you) and your application will not be progressed until we receive the outstanding information.

After provisional notification that your application is considered duly made

2.30. If after your application has been provisionally 'duly made' we establish that your application contains an omission or any discrepancies which render it incomplete, we will:

- write to you as soon as possible setting out what information or documents need to be provided; and
- stop the clock counting the days of the Time Period and advise whether the clock will :
 - recommence from point at which it was stopped; or
 - restart from zero days,

when the outstanding information or documents have been provided.

²⁴ Under s8A(2) of the Electricity Act and s8(3) of the Gas Act.

²⁵ s8A(3) of the Electricity Act and s8(4) of the Gas Act require us to consult before making modifications to a licence on grant.

²⁶ Where we are required to consult or deem it appropriate to do so.

2.31. It should be noted that the time will only start again²⁷ from the date on which we receive your complete response. Should you fail to provide all of the information/documentation requested by us within the deadline we set (which may be agreed with you), your application may be refused.

Network licences

2.32. If you are applying for a network licence (gas transporter or electricity transmission or distribution), a different timescale applies.

2.33. Unlike the competitive licences referred to above, network licences can be issued to those who have a monopoly interest in the gas or electricity network they own and operate. A network failure could ultimately threaten the security of supply of those connected to it.

2.34. In order to protect such consumers, it is vital that sufficiently robust arrangements are in place prior to licence grant.

2.35. Given the above, the Time Period does not apply to decisions on whether to grant a network licence (i.e. transportation, transmission and distribution licences). Further information on the different process²⁸ for network licence applications can be found in chapter 4.

2.36. We aim to grant network licences as soon as reasonably practicable after all relevant information has been provided and assessed and all relevant requirements have been satisfied (including the relevant 'proposal to grant' notice period of 2 months for gas transportation and 28 days for electricity transmission).

²⁷ From the point it was stopped or restart from zero days depending on the extent to which the application is found to be incomplete.

²⁸ Regulation 19 of the Provision of Services Regulations 2009 and Article 13(4) of the Directive allows for different arrangements to apply (instead of Tacit Authorisation) where it is justified in the public interest.

Tiered application process

2.37. We will carry out initial verification checks on the information/documentation sent in your application. In this regard, we use a risk-based tiered application process.

2.38. The table below summarises the main information requirements under the different tiers. Tier 3 applicants may also be asked to bring their original documentation (such as company records) with them.

TIER 1	TIER 2	TIER 3
<ul style="list-style-type: none"> <input type="checkbox"/> Applicants Details <input type="checkbox"/> Applicants' Directors details <input type="checkbox"/> Service address (if non GB) <input type="checkbox"/> Legal Status (Plc, Ltd, etc) <input type="checkbox"/> Applicants Holding/Parent Co and Director details <input type="checkbox"/> Disqualifications statements <input type="checkbox"/> Criminal Convictions Statement <input type="checkbox"/> Details of persons holding >20% of applicants shares. <input type="checkbox"/> Details of persons in effective control (if not body corp) <input type="checkbox"/> Details of licences held, revoked, or applied for by applicant or related person <input type="checkbox"/> Details of previously refused licence applications from applicant or related person. <input type="checkbox"/> Proposed arrangements to use licence for purpose. <input type="checkbox"/> Certified copy of Certificate of Incorporation and VAT Registration Certificate 	<ul style="list-style-type: none"> <input type="checkbox"/> Proof of contact with the relevant Code Administrators <input type="checkbox"/> Copies of any documents that verify information provided in application. <input type="checkbox"/> Details of any licence or authorisation refused, revoked, terminated by any other regulatory body <input type="checkbox"/> Applicants bank, Auditors, Solicitors details 	<ul style="list-style-type: none"> <input type="checkbox"/> Provide original ID Documents <input type="checkbox"/> Attend Interview with Ofgem
<p>Signed Application Declaration</p>		

2.39. All applicants will start the application process in Tier 1 and as such will be required to submit all the information and documents specified in section 1 of the proposed new licence application forms²⁹.

2.40. Applicants that are moved to Tier 2 will be required to submit the additional information and documents as shown above on request by Ofgem. Applicants that are moved to Tier 3 will be required to produce original identification documents and attend an interview with Ofgem. Tier 3 applicants may also be asked to bring their original company documentation (such as company records) with them.

2.41. For the avoidance of doubt it should be noted that an application does not necessarily need to have progressed through all three Tiers before a licence may be refused. A licence application may be refused at any time in the application process where we consider it does not meet the general criteria, or where appropriate, any specific criteria for licence grant.

How we will determine whether an application is moved to Tier 2 and Tier 3

2.42. We conduct a number of checks with the relevant company registry and other sources³⁰ as part of our procedures for assessing a licence application. The results of such checks inform our assessment of risk for each licence application.

2.43. All licence applications will be scored against the risk assessment criteria shown below. We will conduct an initial risk assessment on receipt of the application and build on this risk assessment throughout the application process.

2.44. In broad terms, the key areas that the risk assessment will take into account are:

- unexplained omissions or discrepancies between the information provided in the application and the relevant company registry or other official sources;
- difficulty verifying information provided;
- any information relevant to our decision to grant a licence which comes to, or is brought to, our attention during the course of the application process; and,
- readiness/intent to use licence for the purpose for which it is granted.

2.45. Where we identify any omissions/discrepancy in the application. We will, in the first instance, seek an explanation from the applicant and consider any response.

²⁹ The proposed new licence application licence forms will be attached as a Schedule to the New Regulations. - See supplementary appendix document

³⁰ Among others, Companies House <http://www.companieshouse.org.uk/>, the Insolvency Service: <http://www.insolvency.gov.uk/> and the London and Edinburgh Gazettes: <http://www.gazettes-online.co.uk/>

Risk assessment scores

2.46. We will assign the following points against each risk assessment criteria depending on whether the risk is identified as low, medium or high:

- Low = 0 points
- Medium = 1 point
- High = 2 points

2.47. As stated above, all applicants start the application process in Tier 1 and will be scored against the Tier 1 risk assessment criteria shown below. Where a Tier 1 application accumulates an overall total risk score of:

- 3 or more points against the Tier 1 risk assessment criteria - the application may be moved to Tier 2 and the applicant asked to provide the additional information and documents required under Tier 2.

2.48. Similarly, for applicants that have been moved to Tier 2, the application will be scored against the Tier 2 risk assessment criteria shown below. Where a Tier 2 application accumulates an overall total risk score of:

- 2 or more points against the Tier 2 risk assessment criteria - the application may be moved to Tier 3.

2.49. There is no specific risk assessment criteria for Tier 3. Applicants that are moved to Tier 3 will be:

- requested to provide original identification documents; and
- attend an interview with Ofgem to review and discuss any remaining issues and specific concerns with applicant directly,

prior to any decision on whether or not to grant a licence.

2.50. Where an application is moved to Tier 2 or Tier 3, the application is at that point considered incomplete until the relevant information and documents under the relevant Tier has been provided. In all such cases we will:

- write to you as soon as possible confirming that the application has been moved to Tier 2 or Tier 3 and setting out what information or documents need to be provided; and
- stop the clock counting the days of the Time Period and advise whether the clock will :
 - recommence from point at which it was stopped; or
 - restart from zero days,

when the outstanding information or documents have been provided.

Risk assessment criteria - Tier 1.

Tier 1	Risk Assessment		
	Low	Med	High
Applicant details			
Consistency with Company Registry: Match=Low, Unable to verify=Med, Inconsistencies/omissions= Med/High			
Company Status: Active=Low, Unable to verify/dormant=Med			
Filing/Account history: Up to date=Low, Late/overdue=Med			
Insolvency check: No match=Low, Unable to verify=Med, Match=High			
Minimal/generic applicant contact details given/publicly available?: No=Low, Yes=Med			
Company history: No recent changes=Low, frequent recent changes/previously unrelated business= Med			
Adverse information relevant to decision on licence grant discovered / bought to attention No=Low, Yes=Med/High)			
VAT Number			
Validated: Low, Not validated/De-registered=Med			
All directors, Major shareholders or Person(s) in effective control details			
Consistency with Company Registry: Match=Low, Unable to verify=Med, Inconsistencies/omissions= Med/High			
Minimal/generic applicant director contact details provided: No=Low, Yes=Med			
Disqualification check: No match=Low, Unable to verify=Med Match: High			
Insolvency check: No match=Low, Unable to verify=Med, Match=High)			
Adverse information relevant to decision on licence grant discovered / bought to attention: No=Low, Yes=Med/High			
Applicant's ultimate holding Co/Parent undertaking details			
Consistency with Company Registry: Match=Low, Unable to verify=Med, Inconsistencies/omissions= Med/High			
Company Status: Active=Low, Unable to verify/dormant=Med			
Filing/Account history: Up to date=Low, Late/overdue=Med			
Insolvency check: No match=Low, Unable to verify=Med, Match=High			
Only minimal applicant contact details given/publicly available?: No=Low, Yes=Med			
Company history: No recent changes=Low, frequent recent changes/previously unrelated business= Med			
Adverse information relevant to decision on licence grant discovered/ bought to attention: No=Low, Yes=Med/High)			
Disqualification and Relevant Convictions statement			
Adverse information relevant to decision on licence grant specified in declaration or discovered/bought to attention No=Low, Yes=Med/High)			
Licences/application history of applicant or related person			
Licence(s) revoked or application(s) previously refused: No =Low, Yes=Med, Yes and relevant to decision on licence grant = High			
Proposed arrangements (including indicative timetable) for commencing licensable activity			
Substantive details provided=Low, Little indication of intent to commence licensable activity= Med			
Overall risk total			

Risk assessment criteria - Tier 2

Tier 2	Risk Assessment		
	Low	Med	High
Copies of official documents held by applicant that confirm key details provided in licence application			
Relevant copy documents provided=Low, Applicant indicates little or no documentation available=Med/High			
Evidence of Applicant's contact with relevant Code Owners/Administrators			
Copy correspondence confirming contact with view to becoming signatory/party to relevant codes provided =Low, Little contact made=Med, No substantive contact made=High			
Details of Applicants Bank, Solicitors, Auditors			
Verifiable details provided=Low, Unable to verify details provided=Med, Not provided (new company)=Low, Not provided(established Company)=Med/High			
Actions taken by other relevant regulatory body			
None=Low, Actions relevant to decision to grant taken by other relevant regulatory body=Med/High			
Overall risk total			

Further information on the risk assessment.

1.1. This section sets out further information on the checks that we will undertake through the tiered risk assessment.

Tier 1 risk assessment

Applicant and ultimate holding company/parent undertaking details

2.51. We will carry out checks on an applicant, its ultimate holding company and/or parent undertaking (if any) to confirm they are not insolvent or subject to voluntary arrangements.

2.52. Where details are available we will also consider the applicant's history, including amongst other things, its trading background and any substantive recent changes to key company details. We also propose to consider the contact details provided by the applicant (e.g. whether a director's home address appears to be a residential or commercial property and whether the contact details are minimal).

2.53. We recognise that there may be quite legitimate reasons for recent changes to key company details. We also do not consider a background in the energy industry to be a prerequisite for licence applicants. Neither do we consider an applicant providing minimal contact details to, in itself, be a significant concern, but may become so when coupled with other factors.

2.54. In our view when considered collectively, substantive recent changes to key company details, previous trading experience confined to completely unrelated activities to the licence being applied for and minimal contact details being provided may be indicative of a potentially fraudulent application.

2.55. For example, we consider it appropriate to assign a higher risk rating to an applicant that has made substantive recent changes to its company details, whose previous business activity was in an entirely unrelated industry and who has provided an email address, such as info@hotmail.com as its main email contact address.

VAT Number details

2.56. We recognise that not all applicants will be registered for VAT purposes. Where an applicant is registered for VAT, we will carry out checks to validate the VAT number provided.

All directors, Major shareholders or Person(s) in effective control details

2.57. In addition to carrying out checks to verify the applicant's current directors and shareholders/those in effective control, we will also check that they are not registered as disqualified from acting in connection with the affairs of a company, or undischarged bankrupts.

1.2. Amongst other things, we will also check for consistency between the shareholder details/current appointment dates of directors provided by the applicant and that held by official sources.

2.58. If for example - the discrepancy is due to a recent change in directors or shareholder which has not yet been reflected in records held by official sources and the applicant can provide documentary evidence in support of the change - this is likely to result in a low risk rating.

2.59. However, if the change occurred some months ago and/or the applicant cannot provide any documents to verify the change - this is more likely to result in a higher risk rating being allocated.

2.60. We will also consider the contact details provided for the applicant's directors. For example, an applicant is required to provide the home address of its directors. Where an applicant provides an address that we have reason to believe is not a domestic address and that person is the sole director of the applicant - this is more likely to result in a higher risk rating being allocated.

Licence/application history of applicant or related person

2.61. We will consider details of any licenses or applications in respect of the applicant or any related person which are or have been:

- granted;
- pending;
- revoked; or
- refused,

to assess whether they are relevant to our decision to grant a licence.

Disqualification and Criminal Offences statements

2.62. Where there is evidence of disqualification or criminal convictions in respect of any director, major shareholder or person in effective control of the applicant (or any parent undertaking or holding company), we will consider whether it is relevant to our decision to grant a licence. For example, an unspent conviction for fraud is more likely to be considered relevant to our decision on whether to grant a licence and result in a higher risk rating than a conviction for damage to property.

Proposed arrangements (including indicative timetable) for commencing licensable activity

2.63. We will consider the details provided with respect to proposed arrangements to gauge an applicant's readiness to commence licensable activities and intent to use the licence for the purpose stated in the application.

2.64. For example, an applicant that provides details/indicative dates of key steps³¹ taken (or to be taken) to allow them to commence licensable activities is likely to be allocated a lower risk rating than an applicant that provides little or no details/indicative dates of such arrangements.

Tier 2 risk assessment

2.65. Before moving an application into Tier 2, we will (where appropriate) ask the applicant for an explanation or missing/copy documents. If this provides a satisfactory answer to the issues which have arisen, the applicant will remain in Tier 1. If either the information/copy documentation is not provided (in whole or part), or issues/concerns remain, the applicant will, given the higher assessment of risk, be requested to provide the following additional details.

³¹ Such as making arrangements to become a signatory or party to relevant industry codes

Copies of official documents held by applicant that verify information provided

2.66. Whilst we recognise that an applicant may not necessarily hold or have readily available, copies of official documents that confirm all the information provided in their application. We would expect applicants to hold some official documentation that confirms key details³² provided in the application.

2.67. For example, we would expect applicants to be able to provide copy documentation that confirms the current directors or partners of the applicant³³. For example by way of contracts or letters offering/accepting positions, appointment of director forms, minutes of meetings or registers of directors etc. Applicants that cannot provide any documentation whatsoever are likely to be allocated a higher risk rating.

Evidence of Applicant's contact with relevant Code Owners/Administrators³⁴

2.68. A licensee is required by licence conditions to become a signatory/party to certain industry codes and agreements.

2.69. An applicant that cannot provide evidence of substantive contact with relevant code parties with a view to meeting this requirement as soon as possible after a licence is granted is more likely to receive a higher risk rating than an applicant that provides details of contact with relevant industry parties that clearly illustrates an intention to become a signatory/party to relevant industry codes and agreements.

Details of Applicants Bank, Solicitors, Auditors

2.70. We accept that a newly formed company may not necessarily have appointed Auditors and will take this into consideration when considering the details provided. We would however expect an established company to be able to provide its Bank's and Solicitors' details and will assign a risk rating accordingly.

Actions taken by other relevant regulatory body

2.71. Where an applicant has previously been subject to action by another relevant regulatory body with respect to a licence or authorisation etc, we will consider both the regulatory body taking the action and the nature of the action being taken to assess whether it is relevant to our decision on licence grant.

³² Key details may include, amongst other things, the applicants current directors and major shareholders.

³³ Such as copy of the notification of appointment sent by the applicant to the relevant company registry.

³⁴ Such as copy email/letters to relevant code party.

2.72. For example, any action taken by the relevant regulatory body for energy in another European jurisdiction is highly likely to be considered relevant to our decision on granting a licence.

What happens at the end of Tier 2?

2.73. Once we have received and checked the further information/copy documentation provided by an applicant, one of two routes may be followed.

2.74. If no further questions or concerns arise the application will proceed towards licence grant.

2.75. If information/documentation is missing, or further questions/concerns arise the application may either be refused or moved to Tier 3.

Tier 3 risk assessment

2.76. Applicants that are moved to Tier 3 will be requested to provide original identification documents and attend an interview with Ofgem. They may also be asked to bring the originals of copy documents previously provided (or if still outstanding, those requested).

At what stage in the application process can an application be moved to Tier 2 and Tier 3?

2.77. An application may be moved through the Tiers and the applicant required to submit additional information and documents in support of its licence application at two stages in the application process.

During initial checks for completeness

2.78. On receipt of a licence application we will carry out a number of initial checks³⁵ to ensure that the application is complete and to verify key application details³⁶. Alongside these initial checks we will also carry out an initial risk assessment based on the results of these initial checks and score the application against the risk assessment criteria shown above.

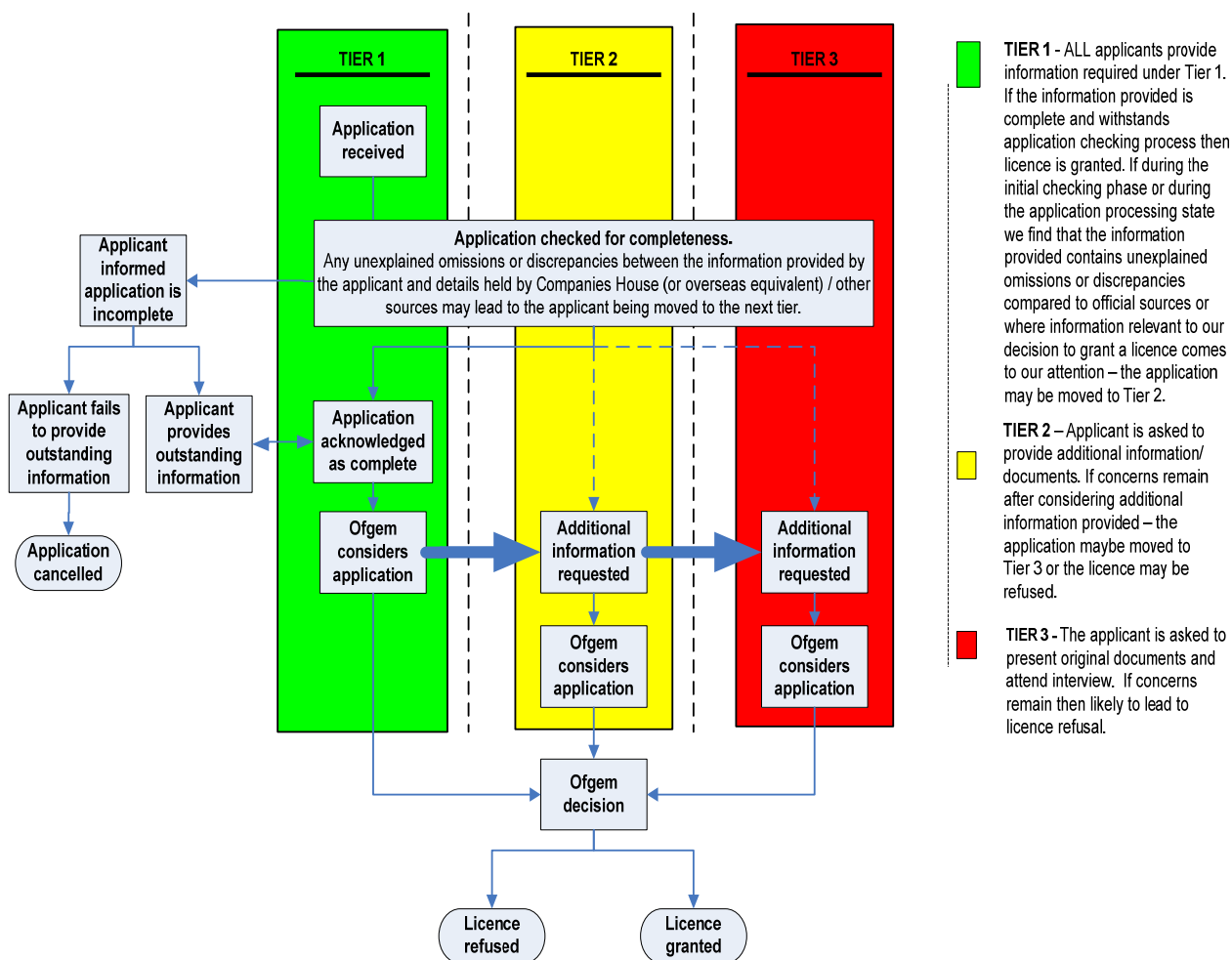
³⁵ For example we will check against Companies House records to ensure that the applicants registration number is correct and that details of all current directors and major shareholders have been provided.

³⁶ To be considered complete an application must be in the form and manner specified in the Applications Regulations and contain all the information and documents specified therein.

2.79. During the course of processing the application

2.80. As well as during the initial checks for completeness stage. An application may be moved to Tier 2/3 after it has been acknowledged as a provisionally 'duly made' application, i.e. during the course of processing the application.

Overview of tiered application process



Licence grant

2.81. If cleared payment has been received, the results of our checks are at each stage satisfactory/you have provided us with satisfactory clarifications, and the notice period has expired (and no outstanding questions have arisen as a result of representations received) we will proceed to grant you a licence.

2.82. On granting a licence, we will send you a signed and sealed licence to your registered address (or principal place of business if you are not a company or LLP).

2.83. We will also publish a notice that we have granted you a licence. You will be expected to comply with all of the terms of it from the date it was granted.

2.84. Please note that for gas transportation and electricity transmission licence applications, there is the extra step of us publishing a notice of intention to grant a licence setting out our reasons. The notice period for this is 2 months for gas transportation and 28 days for electricity transmission³⁷.

2.85. Where we receive representations about a proposal to grant a network licence we will consider whether they are relevant to our application assessment criteria and if necessary the application may be re-assessed.

Modification of an area, extension or restriction of an existing licence

2.86. For these sorts of applications you must complete the same application form and meet the same criteria as you would for a new licence application. Information about your codes of practice³⁸ need not be submitted if that information does not add to and/or is not significantly different in any material way from the most recent information and documents you provided.

Licence transfers

2.87. If you wish to transfer a licence to another person (including corporate entities), you will need to complete the same application form and meet the same criteria as you would for a new licence application in the name of the transferee³⁹.

2.88. Before consenting to transfer a licence, we are required by the Acts to consult for a period of not less than 2 months on the proposed transfer⁴⁰.

³⁷ Gas Act s7(5) & Electricity Act s6B(3).

³⁸ No codes of practice need to be submitted for extensions to supply licences.

³⁹ Gas Act s8AA(6) and Electricity Act s7A(6).

2.89. Where we receive representations about a proposal to transfer a licence we will consider whether they are relevant to our application assessment criteria and if necessary the application may be re-assessed.

⁴⁰ Gas Act s8AA(9) and Electricity Act s7A(9).

3. General assessment criteria

General Information

3.1. In our view, our assessment checks and criteria are non-discriminatory and follow a risk based approach.

3.2. These criteria take into account our duties mentioned in chapter 1 of this document.

3.3. If in our view you knowingly or recklessly provide incorrect information (whether or not by omission), your application may be refused, or revoked if this only comes to light after the licence has been granted. Refusal or revocation on these grounds will be taken into account in any future licence applications made by you or a related party.

3.4. Please note that being granted a licence does not mean that we have given any endorsement to the applicant or any associated person, their financial status or their business plan or methods. We do not give any guarantee or warranty that the licensee or any related person is 'fit and proper'. By applying to us for a licence you agree that the applicant and any related persons agree not to make any representations to the contrary.

3.5. Where we receive representations about a licence application, we will consider whether they are relevant to our application assessment criteria and if necessary the application may be re-assessed.

Checks

3.6. We will carry out checks with Companies House (or overseas equivalent to the extent that it is easily available) and other sources to verify that the information received in support of an application is correct. Including, amongst other things:

- whether details provided in an application matches that held by Companies House;
- the date of incorporation and company type;
- whether the filing history is up to date;
- whether Companies House has an 'insolvency history' for the applicant;
- that the director and shareholder information provided for the applicant matches the records filed with Companies House;
- whether any of the directors or major shareholders are listed on Companies House's disqualified director list;
- whether there is any evidence of insolvency/bankruptcy.

3.7. If an inconsistency arises, we may ask you to provide copies of supporting documentation that confirms the information provided.

3.8. Where there is evidence of incorrect information or a disqualification, this may lead to the application being refused.

3.9. Where there is evidence of insolvency/bankruptcy or voluntary agreements this may lead to the application being refused.

3.10. 'Insolvency' (as defined in the licence revocation schedule⁴¹) may also result in a licence being revoked on not less than 24 hours' notice by us.

- 'Insolvency' for these purposes is said to include the licensee:
- being 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));
- having a receiver appointed;
- having an administration order made in relation to it;
- passing any resolution for its winding-up (unless we had previously approved such resolution), or
- becoming the subject of a winding-up order by the court.

3.11. In the case of the first bullet point above, we will wait for a formal determination⁴² before deciding the matter as we cannot definitively say whether a licensee is unable to pay its debts. Further, we would not pre-empt the outcome of insolvency steps by the licensee or its creditors. Consequently, we check the 'insolvency history' on the Companies House website and the insolvency service register.

3.12. Please note that if any relevant unspent⁴³ criminal convictions are declared, this may affect our decision to grant or refuse a licence. Failure to disclose any relevant convictions may result in your licence being revoked.

3.13. We will also attempt to verify the VAT number you provide.

3.14. We will check whether the applicant, or any related person or any parent or holding companies, directors, shareholders, persons in control, partners etc has ever previously:

- held a licence;
- had a licence application refused; and/or,
- had a licence revoked.

If a previous application has been refused, or a previous licence revoked, the reasons for this may affect our decision whether to grant or refuse the licence applied for.

⁴¹ Schedule 2 of the relevant licence, paragraph 1(f).

⁴² This includes a court decision, appointment of a receiver, or if a resolution for winding-up is passed by the company.

⁴³ "Unspent" under the Rehabilitation of Offenders Act 1974.

Please note that if a licence was revoked on the licensee's request, or with the licensee's consent because it was no longer needed or being used, then this will not usually be used as a reason to refuse a current application.

Prohibited names⁴⁴

3.15. We consider it important that consumers and other market participants are protected from any confusion which may arise from the naming of "phoenix" companies⁴⁵ in the minority of cases where there is abuse of the phoenix company arrangements.

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

3.17. We will not grant a licence where there is a court decision⁴⁶ that an applicant is using a prohibited name in breach of the Insolvency Act 1986 (as amended).

3.18. In addition, we will usually wait for the final outcome of any court proceedings to determine that question and/or where 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

3.19. 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 imposed⁴⁷ on them.

3.20. However, there is no available check that we can conduct⁴⁸ on a potential licensee at the time of its licence application that will provide continuing comfort about financial viability once the licensee commences operations.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ Gas Act 1986 s4AA(2)(b) and Electricity Act 1989 s3A(2)(b)

3.21. Where they exist, we consider that entry testing arrangements⁴⁹ provide a greater level of protection than any test that we could perform before granting a licence.

⁴⁸ 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.

⁴⁹ Entry testing arrangements under the various industry codes include credit rating, interoperability and disaster recovery.

4. Specific criteria for different licensable activities

4.1. In addition to the above, there are extra specific criteria that applications for supplier, network or interconnector licences have to meet.

Supply licences

Statements relating to vulnerable customers

4.2. Applicants for supply licences should be aware that amongst other things, they must comply with the requirements to publish in plain and intelligible language statements setting out their obligations under their licence conditions relating to vulnerable customers⁵⁰.

Holding of other licences by supply licensees

4.3. 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 licence⁵¹; and
- electricity supply licence applicants do not hold an electricity distribution licence or an electricity interconnector licence⁵².

Premises and area to be supplied

4.4. 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 occupied by persons who are chronically sick, have a disability, are of pensionable age, or are likely to default in the payment of charges⁵³.

Extension or restriction of a supply licence

4.5. Applicants for an extension or restriction of a supply licence must use the same application form and satisfy the same criteria as those applying for a new licence.

⁵⁰ SLC26 (Services for specific Domestic Customer groups), SLC27 (Payments, Security Deposits and Disconnections), and SLC28 (Prepayment meters).

⁵¹ Gas Act s7(3) and s7A(3)

⁵² Electricity Act s6(2) and s6(2A)

⁵³ Gas Act 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.

4.6. 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 sufficient⁵⁴ 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.

4.7. 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, have a disability, are of pensionable age, or are likely to default in the payment of charges⁵⁵.

Gas supply through exempt pipelines

4.8. We will notify the Health and Safety Executive ('HSE') of any application we receive for licences authorising the supply of gas through exempt pipelines⁵⁶. In addition to meeting the general criteria as set out above, 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.

Additional specific guidance for electricity supply licence applicants seeking a direction under SLC 11 (Compliance with codes)

4.9. In March 2009, as part of our work on identifying and reducing the regulatory barriers to the development of Distributed Energy ('DE'), we modified Standard Licence Condition 11 (Compliance with Codes) applicable to electricity supply licences.

4.10. 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.

⁵⁴ Gas Act s7A(9) - 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.

⁵⁵ Gas Act 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.

⁵⁶ 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.

4.11. We have published guidance⁵⁷ outlining the procedures for requesting a direction under SLC 11.3 as well as the eligibility and assessment criteria we will use to assess applications for a direction under SLC 11.3 of the electricity supply licence.

4.12. Applicants seeking a direction under SLC 11.3 are encouraged to refer to this guidance as it is intended to help suppliers seeking a direction better understand the relevant requirements.

4.13. For the avoidance of doubt, it should be noted that the Time Period within which we aim to reach a decision on whether or not to grant an electricity supply licence does not include making any decision on whether or not to issue a direction under SLC 11.3.

Network licences

Statements relating to vulnerable customers

4.14. Applicants for network licences should be aware that amongst other things, they must comply with the requirements to publish in plain and intelligible language statements setting out their obligations under their licence conditions relating to vulnerable customers⁵⁸.

Holding of other licences by network licensees

4.15. We will check the following before granting a network licence, namely that:

- gas transporter licence applicants do not hold any other type of gas licence⁵⁹,
- electricity distribution licence applicants do not hold an electricity supply licence or an electricity interconnector licence⁶⁰, and
- electricity transmission licence applicants do not hold an electricity interconnector licence⁶¹.

Safe operation of transportation and distribution systems

4.16. We will, where appropriate, consult the Health and Safety Executive (HSE) about safety issues contained in information submitted by applicants for gas

⁵⁷ Appendix 3 of Distributed Energy - Final proposals and statutory notice for electricity supply licence modification. (Ofgem Ref: 08/09) February 2009.
http://www.ofgem.gov.uk/Sustainability/Environment/Policy/SmallrGens/DistEng/Documents1/DE_Final_Proposals.pdf

⁵⁸ Conditions 9 and 10 of the Electricity Distribution Licence and conditions 17, 18 and 19 of the Gas Transporter Licence.

⁵⁹ Gas Act s7(3) and s7A(3).

⁶⁰ Electricity Act s6(2) and s6(2A).

⁶¹ Electricity Act s6(2A).

transportation and electricity distribution licences. We will also consult the HSE about any other safety matters⁶².

4.17. 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 about whether it considers the system can be operated safely.

Extension or restriction of a network licence

4.18. Applicants for an extension or restriction of a network licence must use the same application form and satisfy the same criteria as those applying for a new licence.

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

4.20. 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.

Specific criteria for gas transporter licence applications

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

SLC 8 (Provision and Return of Meters)

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

⁶² Gas Act s4A(1).

Charges and financial ring-fencing provisions

4.23. On grant an IGT licence will not have the Relative Price Control (RPC) conditions⁶³ 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.

4.24. Following grant of an IGT licence, we will consult on and seek the consent of the licensee to insert a special condition and modify the standard licence conditions of the licence granted to the applicant⁶⁴, so as to include the RPC conditions in order to bring any new IGT licence into line with existing Gas Transporter licensees.

4.25. Under the terms of the RPC mechanism⁶⁵, 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.

4.26. Following grant of an IGT licence, we will also seek the licensee's consent to issue a Transportation Services Direction⁶⁶ to give effect to the financial ring-fencing conditions.

4.27. As of March 2006, all IGTs have the financial ring-fencing conditions⁶⁷ in effect in their licence following issue of Transportation Services Directions to those licensees. The financial ring-fencing conditions cover:

- restrictions on activity;
- the availability of adequate resources;
- an undertaking from their ultimate controller;
- the obtaining of a suitable investment grade credit rating⁶⁸; and,
- indebtedness of the licensee.

4.28. 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.

⁶³ New Special Condition 1 and amended standard conditions 4A (the RPC Conditions).

⁶⁴ Under s23(1) of the Gas Act.

⁶⁵ See The Regulation of Independent Gas Transporter Charging: Final Proposals. Decision document. July 2003. Ofgem. 64/03.

http://www.ofgem.gov.uk/Networks/GasDistr/IGTReg/Documents1/3946-Decisiondoc_IGT_Final_Proposals.pdf

⁶⁶ By Direction under standard condition 2 of the gas transporter licence.

⁶⁷ Financial ring-fencing for new and existing independent gas transporters. Final Proposals. September 2005. Ofgem. 209/05.

<http://www.ofgem.gov.uk/Networks/GasDistr/IGTReg/Documents1/11641-20905.pdf>.

⁶⁸ or Alternative Arrangements with the prior permission of the Authority.

4.29. 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.

4.30. For clarity, modifications⁶⁹ relating to the following licence conditions in gas transporter licences will apply to new IGTs following the issue of a Transportation Services Direction.

- Condition 17 (Provision of services for specific domestic customer groups);
- Condition 18 (Arrangements for access to premises);
- Condition 19 (Procedure for dealing with complaints);
- Condition 21 (Reporting on performance); and
- Condition 22 (Provision of information during unplanned interruptions)

Specific criteria for electricity distribution licence applications

4.31. All Electricity Distribution Network Operators other the incumbent Distribution Network Operators (DNOs) are known as Independent Distribution Network Operators (IDNOs).

SLC 8 (Safety and Security of Supplies Enquiry Service)

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

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

- the service adequately differentiates between enquiries relating to security, availability and quality of service of the licensee's distribution system, or concerning danger or requiring urgent attention, and other enquiries. It is important to ensure that the efficiency of the service will not suffer due to large numbers of other enquiries;
- if any part of the establishment, operation, and maintenance of the service is to be procured from another organisation, the applicant must demonstrate that the contractual arrangements are adequate and the organisation has the capability to provide a satisfactory service;
- the service should be available through a wide range of communication media. These must include telephone, correspondence and personal visit. It would also be desirable for them to include Internet and e-mail facilities. All relevant

⁶⁹ Modification dated 31 March 2008.

<http://www.ofgem.gov.uk/Networks/GasDistr/GDPCR7-13/Documents1/SLCs%20IGT%20only%20-%20SLCs%20-%2017,19,21,22,44,46.pdf>

addresses and telephone numbers must be included in the statement required by SLC 8;

- 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.

Financial ring-fencing and alternative arrangements

4.34. The Schedule 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.

4.35. In order to protect electricity customers, the Authority hereby indicates, for the purposes of the Schedule of the Application Regulations that it proposes to make modifications to the standard conditions of distribution licences prior to granting such licences. The modifications reflect the expectation that the standard conditions in Section B of the distribution licence will not be in effect for new applicants and that certain amended standard conditions will be inserted in an additional Section BA. The amended standard conditions refer to:

- the regulation of charging arrangements;
- credit rating of licensee; and
- restriction on indebtedness and transfers of funds.

4.36. Following consultation on this proposed modification, we may modify the standard licence conditions in the applicant's licence to such extent as we consider requisite to meet the circumstances of the particular case⁷⁰.

4.37. The applicant will need to provide details of their proposed arrangements for compliance with these amended standard conditions as part of their application.

4.38. The Authority will need to be satisfied with the applicants proposed arrangements to comply with SLC 31 (Undertaking from Ultimate Controller) and proposed amended standard condition BA3 (Credit Rating of Licensee).

⁷⁰ Electricity Act s8A(2).

4.39. We have published guidance⁷¹ on alternative arrangements that might better suit the circumstances of smaller companies in complying with the proposed modified licence condition relating to the Credit Rating of the Licensee. We have also published a decision document that sets out the appropriate long term regulatory regime for IDNOs and incumbent DNOs operating outside their distribution services area⁷².

4.40. In order for a distribution licence to be granted, an applicant must satisfy the requirements of SLC 31 and the proposed amended standard condition BA3 (Credit Rating of Licensee).

Further information for electricity transmission licence applicants

Extent of participation in transmission

4.41. It should be noted that this Guidance Document is not applicable to applications for offshore transmission licences⁷³.

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

4.43. 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.

4.44. 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, we may seek to modify the incumbent transmission licensee's licence to remove that area from the incumbent's licence.

⁷¹ 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.

⁷² Regulation of Independent Electricity Distribution Network Operators, 26 July 2005. (Ofgem Ref: 176/05)
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=2&refer=Networks/ElecDist/Policy/IDNOs>

⁷³ Applications for an offshore transmission licence (as defined by s6C(5) of the Electricity Act) 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.

Standard licence conditions in transmission licences

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

4.46. 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.

4.47. 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

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

4.49. In addition, because it is important that any modification of an area does not affect the operation of the National Electricity Transmission System we will take into consideration whether the proposed modification would affect persons connecting to the National Electricity Transmission System.

Interconnector licences**Holding of other licences**

4.50. We will check the following before granting an interconnector licence, namely that:

- electricity interconnector licence applicants do not hold any other electricity licence⁷⁴; and,
- gas interconnector licence applicants do not hold any other gas licence⁷⁵.

⁷⁴ Electricity Act s6(2A).

⁷⁵ Gas Act s7(3).

Additional specific guidance**Third party access and exemption from certain requirements**

4.51. 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 of interconnector licences, thereby giving effect to an exemption from the EU legislation requiring third party access⁷⁶.

4.52. 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.

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

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

4.55. For the avoidance of doubt, it should be noted that the Time Period within which we aim to reach a decision on whether or not to grant an interconnector licence does not include making a decision on whether or not to grant an exemption from some or all of the relevant conditions mentioned above.

Proposed points of connection

4.56. In November 2007, we published an open letter⁷⁷ clarifying our position regarding the requirement in the Electricity Application Regulations for licence applicants to specify the actual or proposed point of connection for a proposed interconnector.

⁷⁶ Electricity and gas interconnector licence - Guidance Document (April 2005)
http://www.ofgem.gov.uk/Licensing/Work/Archive/11162_12105.pdf

⁷⁷ Open Letter- Interconnector licence applications. 19 November 2007. Ofgem.
<http://www.ofgem.gov.uk/Licensing/Work/Documents1/Open%20letter%20interconnector.pdf>

4.57. Applicants must, wherever possible, specify the locations of the actual substations⁷⁸ at which the interconnector will be connected to an electricity transmission or distribution network.

⁷⁸ Or Ordinance Grid Survey Reference coordinates encompassing the proposed points of connection where the substation is yet to be built.

5. The refusal and appeals procedure

Proposal to refuse an application

5.1. 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 to any extent from acting in connection with the affairs of a company;
- any person(s) or entity named in the application are undischarged bankrupts, have been declared insolvent or are subject to a voluntary arrangement with creditors;
- any person(s) or entity named in the application has an unspent criminal conviction;
- any person(s) or entity name in the application has unsatisfied county court judgment(s);
- the applicant, or any person or entity named in the application has previously had a licence application refused or a licence revoked;
- the applicant is insolvent⁷⁹;
- where there is a court decision⁸⁰ that an applicant is using a prohibited name in breach of the Insolvency Act 1986;
- 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

5.2. 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.

5.3. 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.

⁷⁹ Within the meaning of the revocation conditions in Schedule 2 of a licence.

⁸⁰ 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

5.4. 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

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

6. Other points to note

Modifications to Standard Licence Conditions

6.1. Please note that SLCs applicable to any licence we may grant you may be modified.

6.2. You are responsible for ensuring that you keep abreast of any changes to the SLCs and that you are in compliance. Notices of modifications can be found on our website at:

<http://www.ofgem.gov.uk/Licensing/Work/Notices/ModNotice/Pages/ModsNotices.aspx>.

6.3. If you wish to learn more about how this may happen, please contact the licensing team at licensing@ofgem.gov.uk.

Change of ownership

6.4. If the registered number of the licensee remains the same, but the persons/entities which own it change, then no transfer of the licence is necessary (because the licensee itself has not changed).

6.5. If the licensee's registered number does change, then you would need to apply for a licence transfer.

Enforcement

6.6. We have the power under sections 28-30F of the Gas Act and sections 25-27F of the Electricity Act to take enforcement action for breach of your licence.

6.7. More information on enforcement can be found on our website at:

<http://www.ofgem.gov.uk/About%20Us/enforcement/Pages/Enforcement.aspx>.

Appendix 1 - The Application Regulations 2010

The Applications Regulations will shortly be available for download from our website or from the website of the Office of Public Sector Information (OPSI) at <http://www.opsi.gov.uk/stat>:

Statutory Instrument 2010 No. []: The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2010; and,

Statutory Instrument 2010 No. []: The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2010)