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| Questions for Gas Transmission System Operators (TSOs) – Applicants under section 8D of the Gas Act 198 only |

## Useful information for the applicant

The questions set out in this Annex will be the form specified by the Authority[[1]](#footnote-1) under section 8D of the Gas Act 1989 (GA).

All applications for ownership unbundling certification must be in writing and contained in a single document. Each application should contain sufficient information and analysis to enable Ofgem to understand the issues and reach an informed decision without reference to additional documents. Applicants should ensure that any information relevant to the matters that Ofgem must consider should be provided in the application document even if that information is not strictly required in response to the questions set out below.

This questionnaire is designed to request information necessary to enable Ofgem to discharge its duties under the GA.

Where any answers rely on contractual provisions please include the relevant underlying contractual provisions with this application (but not entire contracts). We invite TSOs to discuss applications for certification before they are submitted. This will usually take the form of submission of a draft of some or all of an application, together with a note of any issues that the applicant wishes to discuss with Ofgem. It is in the interests of both the applicant and Ofgem to ensure that, on the one hand, an application contains sufficient information for it to be considered complete; and on the other that the scope of information provided can be suitably focussed on any issues that might arise.

An applicant should clearly identify in any application any information which the applicant considers to be confidential. For these purposes, information will be confidential if it is personal information for the purpose of section 40 Freedom of Information Act 2000; or information the publication or disclosure of which would, or would be likely to, prejudice the commercial interest of any person. For each piece of information identified, the applicant should provide an explanation as to why that information is confidential.

Where the same information is required in response to more than one question it is acceptable to answer questions by cross reference to the answers to previous questions.

## Definitions

Unless otherwise specified, terms defined in the GA have the same meaning in this form. In particular, the following terms are defined in section 8Q of the GA:

* “control”
* “gas undertaking”
* “relevant producer or supplier”
* “shareholder rights”

References to:

* “company” should be treated as a reference to any form of entity and adapted to the circumstances of that entity;
* “directors” should be treated as references to members of the executive or governing body of a company or, if the applicant is not a body corporate, to partners or equivalent persons;
* “person” in this annex are to natural and legal persons;
* “public body” is any governmental or supragovernmental body or any corporate entity controlled by such a body.

## Section 1: General Applicant Information

1. Applicant’s full name (registered name if applicable).

2. Applicant’s registered number (if applicable).

3. Applicant’s trading name (if applicable).

4. Applicant’s legal status[[2]](#footnote-2) and country of registration.

5. Applicant’s registered office (or if not registered; principal office).

6. If the applicant is a partnership, please list the full name(s), registered numbers (if applicable) and registered offices (or if not registered; principal offices) of each partner.

7. Whom should we contact about this application?

|  |  |
| --- | --- |
| Title |  |
| First names |  |
| Surname |  |
| Job title |  |
| Company name |  |
| Business address |  |
| Postcode |  |
| Phone number (including area code) |  |
| Mobile number (optional) |  |
| Email address |  |
| Company website address |  |

Please note that if this contact changes you will need to provide us with alternative details.

8. Licences held by the applicant, and any licence applications made by the applicant, under the Gas Act 1986 or the Electricity Act 1989.

9. A description of the governance of the applicant, identifying the board or governing body of the applicant. Please also provide in support: (i) a list of the full names of the applicant’s directors; and (ii) for each director a list of their other appointments setting out the full name, registered number (if applicable) and the nature of the business of the persons in which they hold the appointments.

10. Please provide a corporate structure diagram showing all members of the group of companies of which the applicant forms part up to and including each ultimate controller (which is not itself controlled by any other person). The diagram should show the names and types of business of each of the companies shown on it. The diagram should show:

* each company which directly or indirectly controls the applicant;
* each other company which is directly or indirectly controlled by any company which directly or indirectly controls the applicant; and
* any company which is directly or indirectly controlled by the applicant.

In each case where control arises, please specify the nature and means of control in each of the above (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, de facto and de jure control, sole control or joint control).

The diagram should separately identify any gas or electricity undertaking where the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is a relevant producer or supplier or has a majority shareholding in any such undertaking.

It is not necessary to include dormant companies. You can use several diagrams and should present the diagrams in a manner which best enables Ofgem to assess who controls whom.

You should separately provide, in tabular form, a list of all equity interests or voting rights held by any company shown in the diagram in any gas or electricity undertaking where the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is a relevant producer or supplier (regardless of whether or not these undertakings are shown on the diagram) and a brief explanation of why such equity interests or voting rights do, or do not, create or confer control.

## Section 2: Ownership of transmission system

11. Please specify all transmission systems owned (fully or partially) by the applicant in the UK including interconnectors and separated transmission networks.

12. Please specify transmission systems which the applicant owns (fully or partially) in the European Economic Area (EEA).

13. Please provide a list of any transmission systems which the applicant leases or rents from or to any other party.

14. Please indicate all other owners of the transmission system mentioned in questions 11 and 12, specifying the shares of each of the owners (where the applicant only partially owns the transmission system).

15. Where the applicant is a joint venture belonging to two or more undertakings owning transmission systems in different Member States, please specify if the entire joint venture is approved under an ISO (Independent System Operator) or ITO (Independent Transmission Operator) model. Please name these other companies and indicate the applicant's status.

16. Where the applicant is a vertically integrated undertaking[[3]](#footnote-3) please describe any procedures in place to ensure that no commercially sensitive information is transferred to that part of the integrated business responsible for the production or supply of gas or the generation or supply of electricity.

## Section 3: First test: the applicant (a) does not control a relevant producer or supplier; (b) does not have a majority shareholding in a relevant producer or supplier; and (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier

17. Please provide a list of all shares held by the applicant or by any company controlled by the applicant, showing the proportion of the total issued share capital held by the applicant.

18. Please identify any company identified in the answer to question 17 which is active in any way in the gas or electricity sector. For each such company explain whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the company is a relevant producer or supplier.

19. For any shareholding which is less than 50% of the total issued voting share capital of the company in question, please identify:

* any special rights held by the applicant or any company controlled by the applicant including rights attached to shares, arising by way of contract or in any other way; and
* the size of the shareholding of the three largest shareholders in the company in question.

20. Please provide an undertaking, in the form attached, that the applicant will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.

## Section 4: Second Test: where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who (a) controls an gas undertaking which is a relevant producer or supplier; or (b) has a majority shareholding in an gas undertaking which is a relevant producer or supplier

If the applicant is not a body corporate, please answer the questions below in respect of any partners or equivalent persons.

21. Please provide a list setting out the full name(s) and job title of each of the applicant’s current directors.

22. Please provide a fair and accurate overview of the process for appointing the applicant’s directors and provide supporting documentary extracts (e.g. from the Articles of Association and any other relevant contracts or constitutional documents). If there is more than one process, please describe each process and identify the directors each process relates to. Please ensure that your answer identifies any persons who have a role in the appointment decision making process which has led to the appointment of any current director or may lead to any future appointment of any director.

23. Please provide a list and diagram showing a fair and accurate overview of any person who controls the applicant and has been or can be involved in the appointment of any of the applicant’s directors.

24. Where, in your response to questions 22 or 23 you have identified any person who has the right to appoint a senior officer of the applicant, you should provide sufficient information and evidence about that person to enable Ofgem to satisfy itself that that person neither controls a gas undertaking which is a relevant producer or supplier; nor has a majority shareholding in an gas undertaking which is a relevant producer or supplier.

## Section 5: Third Test: where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of a gas undertaking which is a relevant producer or supplier

25. For each of the applicant’s directors, please confirm whether they are also directors of any other undertaking. If so, please confirm the full name(s) of any such undertaking of which they are also a director. Please explain, for each such undertaking, whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is a gas undertaking which is a relevant producer or supplier.

## Section 6: Fourth and Fifth Tests: the applicant is not controlled by a person who (a) controls a relevant producer or supplier; and, (b) has a majority shareholding in a relevant producer or supplier

26. For each company identified in response to question 10 above as directly or indirectly controlling the applicant please provide a list of all other companies controlled by that company or in which that company has a majority shareholding. In respect of each company named on that list please explain, with sufficient supporting information and evidence, whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the company is a relevant producer or supplier.

## Section 7: Fourth and Fifth Tests: the applicant is not controlled by a person who (a) controls a relevant producer or supplier; and, (b) has a majority shareholding in a relevant producer or supplier - Rights conferred as a condition of the provision of a financial support or guarantee

**Please complete this section ONLY if your application is made on the basis that Ofgem should exercise its discretion to treat the fourth and/or fifth test as passed on the grounds set out in section 8H(7) and/or 8H(9) of the GA**.

27. Please give the name and registered number (if applicable) of any company which controls the applicant by virtue of exercising a right conferred as a condition of the provision of either financial support or guarantee (or both). Please provide sufficient information about the relevant financial support or guarantee, the right which was conferred as a condition of that financial support or guarantee, the circumstances which led to the exercise of that right and the nature of control arising as a result of the exercise of that right, together with all other information which you consider Ofgem should take account of in deciding whether circumstances have arisen in which Ofgem is able to exercise its discretion under section 8H(7) and/or 8H(9) of the GA and, if so, whether it should exercise that discretion.

28. Please give the name and registered number (if applicable) of any company which controls the applicant and controls, or holds a majority shareholding in, a production or supply business where the control or majority shareholding in the production or supply business was gained through the exercise of a right conferred as a condition of the provision of either financial support or guarantee (or both).

## Section 8: Public bodies

29. Are any of the bodies which, directly or indirectly, exercise control or have any shareholder rights over the applicant a public body? If so:

* please describe how, and which part of, the public body exercises control or has any rights over the applicant;
* please describe if the public body also directly or indirectly exercises control or exercises any rights over an undertaking performing the functions of generation, production and supply;
* please describe briefly the constitutional (legal and financial) interdependencies between the public body and the applicant; and
* please describe how independence between the public body and the applicant is ensured.

## Section 9 - country outside the United Kingdom

30. Please specify whether the applicant or any company that controls the applicant is a person from a country outside the United Kingdom, and if so, confirm the country where the applicant or the persons controlling the applicant is incorporated.

31. Please also specify and whether the applicant or the Company is also incorporated in the United Kingdom.

## Section 10: Miscellaneous

32. Please provide any further information or extracts from documents which you consider relevant to your application.

33. Please confirm here if the applicant accepts service of documents by e-mail.

## Section 11: Declaration

The declaration below must be signed by a current director of the applicant pursuant to a resolution of the board or, where the applicant is not a body corporate, by a partner or equivalent person.

By signing this declaration, I declare that:

1. I am authorised to make this application on the applicant’s behalf;
2. To the best of my knowledge and belief, having made due and proper enquiries of all companies named in this application all the details provided in this application or document(s) supplied with this application are true and complete;
3. I understand that knowingly or recklessly making a false, incomplete or misleading statement in support of this application may lead to certification being refused or withdrawn and may result in criminal proceedings being instituted under section 43 of The Gas Act 1986;
4. The applicant undertakes to notify Ofgem immediately in writing of any event or circumstance which may affect the basis for the certification decision.

Signature:

Name in capital letters:

Capacity of signatory:

Date:

## Draft form of undertaking for gas TSOs – Applicants under section 8D of the Gas Act 1986 only

1.This undertaking is given by [ ] to the Gas and Electricity Markets Authority pursuant to section 8H(2)(c) Gas Act 1986 (“GA”).

2. [ ] undertakes that it will not exercise, or cause to be exercised on its behalf, any shareholder rights in relation to a relevant producer or supplier.

3. For the avoidance of doubt this undertaking applies not only to shareholder rights held by [ ] at the date of this undertaking but also to shareholder rights acquired by [ ] during the currency of this undertaking.

4. This undertaking:

1. shall come into effect on the relevant date; and
2. shall continue in force until [ ] ceases to hold [a gas transporter licence and participate in the transportation of gas / an interconnector licence and participate in the operation of an gas interconnector].

5. For the purpose of this undertaking:

1. “relevant date” shall have the meaning given to that phrase in section 10A EA; and
2. “shareholder right” and “relevant producer or supplier” shall have the meaning given to those phrases in section 10O EA.

FOR AND ON BEHALF OF [ ]

... ... ... ... ... ... ... ... … Signature ... ... ... ... ... ... ... ... ... Signature

... ... ... ... ... ... ... ... ... Name ... ... ... ... ... ... ... ... … Name

... ... ... ... ... ... ... ... ... Title ... ... ... ... ... ... ... ... ... Title

... ... ... ... ... ... ... ... ... Date ... ... ... ... ... ... ... ... ... Date

(Director) (Director/Company Secretary)

1. The Authority means the Gas and Electricity Markets Authority (“GEMA”) and Ofgem means the Office of Gas and Electricity Markets. In this document, the terms, the Authority, Ofgem, we and us are used interchangeably. [↑](#footnote-ref-1)
2. Eg public limited company, private limited company, other body corporate (please specify), partnership, unincorporated association, sole trader or other entity (please specify). [↑](#footnote-ref-2)
3. “vertically integrated undertaking” is defined in section 8C(6) of the GA to have the same meaning as in Article 2(20) of the Gas Directive: “’vertically integrated undertaking’ means a natural gas undertaking or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural”. [↑](#footnote-ref-3)