



Making a positive difference
for energy consumers

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

Email: licensing@ofgem.gov.uk

Date: 11 April 2019

Dear colleagues,

Consultation on new applications regulations and application guidance document

Today we published our final proposals on a new approach to licensing suppliers, to strengthen the criteria we use to assess supply licence applications.¹ This is part of our wider Supplier Licensing Review, which aims to raise standards around supplier financial resilience and customer service.²

The purpose of this letter is to consult on new Applications Regulations (Statutory Instruments), including updated application forms and fees, and a new application guidance document. We are also seeking your views on adding new requirements related to applicants' suitability to hold a licence ('fit and proper') for all types of licence application.³

Please provide any views on the issues set out below **by 13 May 2019**.

Overview of proposed changes

In our final proposals on new entry requirements for suppliers, we have set out that we will assess future supply licences against three new criteria:

- Criteria 1: The applicant has the appropriate resources for their proposal to enter the market
- Criteria 2: The applicant understands their regulatory obligations and has appropriate plans in place to meet these
- Criteria 3: The applicant is fit and proper to hold a licence

To implement these reforms, we are proposing new application questions (setting out the increased information requirements), and an updated guidance document outlining our process and assessment approach.

We are also consulting on proposed amendments to the application process for other licence types. We are proposing that the new 'fit and proper' disclosure requirements for suppliers should also be applicable to all applicants for a gas or electricity licence. We are proposing to align, where appropriate, the application process for Gas Transporters with

¹ <https://www.ofgem.gov.uk/publications-and-updates/supplier-licensing-review-final-proposals-entry-requirements>

² <https://www.ofgem.gov.uk/publications-and-updates/supplier-licensing-review>

³ This application process does not apply to Offshore Transmission licences (OFTO) or the Smart Meter Communication licence.

that of Electricity Distributors, increase the application fees for all licence application types,⁴ and consolidate our existing three-tier risk-based process into a two-tier process. Further information on these changes, and other proposed updates to the existing applications process, are provided below.

Applications Regulations

The Gas Act 1986 and the Electricity Act 1989 (the Acts) make it an offence to carry out certain activities unless you hold a licence, or are exempt from this requirement. The Acts allow for an application for a licence⁵ to be made in such form or manner as may be prescribed in regulations made by the Authority.⁶ The current regulations⁷ were made in 2010 following a review of our licence application procedures.⁸ We propose to revoke these regulations and replace them with new Statutory Instruments (SIs) as found in Appendices 1 and 2.⁹

We have updated the transitional arrangements for the new SIs. The proposed drafting sets out that any applications made under the current regulations that have not yet been granted (or refused) on the date the new regulations come into effect will need to have further information submitted in order to be assessed under the new rules. We have also added clarity that the ten working day period for applicants to publish their notice of application commences the day after we notify the applicant that their application is 'duly made', and updated some definitions.

The substantive changes are to the Schedules of the SIs, which contain the application forms. Below we summarise and provide our rationale for the proposed amendments:

- **Suitability to hold a licence.** One of our new criteria for considering supply licence applications is that the applicant is 'fit and proper' to hold a licence. Applicants will be required to make certain disclosures to facilitate this assessment. Our assessment of suitability to hold a licence is based on our duty to protect the interests of existing and future consumers,¹⁰ and we consider that the proposed disclosure requirements for suppliers are equally applicable to all types of licence applicants. In practice we already make checks in relation to these areas during the course of our application process, however a disclosure requirement set out in the application form will strengthen the process and make this more transparent. A false declaration made at application stage is an offence under section 43 of the Gas Act 1986 (as amended) or section 59 of the Electricity Act 1989 (as amended), and provides grounds for potential licence refusal or revocation (if discovered after the licence is granted), adding an additional safeguard.

Under our existing application process, applicants for all licence types must provide disclosures in respect of unspent criminal convictions and director disqualifications. We are retaining these questions, but propose to widen the requirement to capture individuals with 'significant managerial responsibility or influence'.¹¹

⁴ Except interconnector licences.

⁵ Or extension or restriction, or modification of an area, of an existing licence.

⁶ Gas Act 1986 7B(1), Electricity Act 1989 6A(2).

⁷ [SI's 2010 No. 2155](#) and [2010 No. 2154](#)

⁸ <https://www.ofgem.gov.uk/publications-and-updates/gas-and-electricity-licences-changes-application-regulations-and-revocation-schedules-future-licences>

⁹ Appendix 1: Draft Applications Regulations 2019 – Gas; Appendix 2: Draft Applications Regulations 2019 – Electricity. Appendices are published as subsidiary documents to this letter on our website.

¹⁰ In line with our principal objective.

¹¹ The addition of persons with significant management influence is intended to capture the top layer of management to the extent that these individuals may not be statutory directors – eg CEO.

We explain below the additional disclosure requirements we are proposing. We explain how we propose to assess this information within the draft guidance document (Appendix 3¹²).

Proposed new disclosures	Rationale
Bankruptcy, insolvency, debt judgements	We currently make checks in respect of insolvency history or bankruptcy relating to the applicant or any person named in the application, and consider it would be more robust to ask the applicant to provide a declaration on this in the application form.
Supplier of Last Resort (SoLR) events	This relates closely to the insolvency disclosure above, and would already form part of our considerations when assessing a licence application, however we consider this warrants a specific declaration from applicants. We propose that applicants must declare if they were connected to a company that triggered a SoLR event within the 12 months immediately preceding that SoLR event.
Compliance and enforcement history	We ask questions about the applicant's (or related person's) licence history in the current application form. As part of our assessment of a licence application we will also have regard to any adverse information in respect of the persons named in the application, including enforcement history or significant compliance concerns. We therefore propose to ask the applicant to make a disclosure relating to any current or recent compliance or enforcement action involving relevant individuals.
Actions by other regulators, or competition law infringement	This question appears in the existing application form under Tier 2. We propose to move this requirement from Tier 2 to Tier 1 ¹³ as we consider that, to strengthen the application process and ensure that robust licensing decisions are made, all applicants should bring such information to our attention, not only where applications are assessed as potentially higher risk. We have also proposed to update this to specifically capture competition law infringements.

- **Specific information for supply licence applications.** To implement the outcomes of our Supplier Licensing Review market entry reforms, we are proposing a series of new questions in the supply licence section of the application forms. These requirements are in line with what we proposed in our November consultation,¹⁴ and taking into account the responses to that consultation.¹⁵ The new information requirements are designed to enable us to make an assessment of whether the applicant has appropriate resources for their plan to enter the supply market, and an understanding of their customer service obligations.

These information requirements will also apply to supply licence extension applications,¹⁶ and any requests by licensees to transfer their supply licence.¹⁷ Details of what we expect applicants to provide under this section are provided in the draft guidance document.

¹² Appendix 3: Draft application guidance document. Appendices are published as subsidiary documents to this letter on our website.

¹³ As set out in the current regulations and guidance, we operate a tiered risk-based licence application process. Applications assessed as higher risk may be moved to a higher tier in the process where additional information is required.

¹⁴ <https://www.ofgem.gov.uk/publications-and-updates/supplier-licensing-review>

¹⁵ Non-confidential responses are published on our website.

¹⁶ An extension to an existing supply licence means either from non-domestic only to include domestic supply, or an extension of the specified area. The majority of supply licences have been granted on a GB-wide basis.

¹⁷ Licence transfers are not captured by the applications regulations however we apply the same considerations as if a new licence was being applied for. S.8(AA) of the Gas Act 1986 and s.7(A) of the Electricity Act 1989.

- **Specific information for gas transporter applications.** We propose to align, where appropriate, the questions contained in the current gas transporter application form with those in the electricity distribution application. These questions relate to the proposed financial ring fencing arrangements of the applicant.¹⁸
- **Consolidation of Tier 2 and Tier 3 process.** In 2010, we introduced a tiered, risk-based approach to processing licence applications.¹⁹ This process ensures that greater scrutiny is applied and additional information requested where deemed necessary, rather than in all cases. The threshold for escalating an application from Tier 2 to Tier 3, however, is relatively high under the current regime. We do not believe there is merit in retaining a process step if it has limited practical effect, and we therefore consider a two-tier process would be more efficient. We propose to broaden our Tier 2 assessment to encompass the existing Tier 3 information requirements. In particular, the opportunity to interview licence applicants is likely to be a useful step for supply licence applications under the new regime, where we are seeking to assess whether the applicant is prepared to enter the market. We also propose that the new Tier 2 information requirements should be flexible, in order that we may request the pertinent information on a case-by-case basis, rather than requiring all of the information in all of the cases. This will ensure applicants are only asked to provide such information and documentation that we consider necessary to make our licensing decision.

We also propose to add the requirement for Tier 2 applicants to produce a criminal records check certificate, if requested. We consider that this would be an improvement to the current requirements, as it may be necessary to seek proof of an applicant's declaration regarding unspent criminal convictions, for example if conflicting information is brought to our attention via other sources. We have also proposed that Tier 2 applicants may be required to submit the CVs of key people in support of their application.²⁰

- **New application fees.** The current application fees are set out in the application regulations and have not been reviewed since 2010. We have undertaken an exercise to review these fees taking into consideration our current costs and the extent of work that is needed on average to carry out our assessment of each licence application type.

We have also calculated an estimate of the additional resource it will take to process supply licence applications under the new regime. The proposed new fees are set out in the SIs.

As a result of this review we are proposing to raise the application fees for all application types, except the interconnector licence fee which remains unchanged.²¹

We consider the proposed new fees are reasonable and proportionate to the cost of the relevant application procedures.

- **Housekeeping amendments.** We have made a number of changes for administrative efficiency which are largely self-explanatory.²² These include, for example, adding clarity around applicant service addresses, and seeking more

¹⁸ Standard Condition 45 (Undertaking from Ultimate Controller) and Standard Condition 46 (Credit Rating of Licensee).

¹⁹ 2010 Decision: <https://www.ofgem.gov.uk/sites/default/files/docs/2010/09/appregsdecisionfinal.pdf>

²⁰ As set out in our Supplier Licensing Review final proposals on new entry criteria.

²¹ This is because our assessment process for interconnectors is different to that envisaged in 2010, with less work required before an interconnector licence is granted (because assessment of exemptions is typically after licence grant); however, against this our costs have risen. Overall, we consider the fee for this type of application remains at the appropriate level.

²² We have previously consulted on many of these updates, see Annex C of this consultation:

https://www.ofgem.gov.uk/system/files/docs/2017/10/electricity_storage_licence_consultation_final.pdf

details on parent and ultimate holding companies (ie country of registration and director dates of birth). We have added a question for electricity supply applicants to complete if they are seeking a direction under SLC 11,²³ and removed bank/contact details and the application processing time periods to provide flexibility for these to be updated if needed.²⁴ We've also proposed updates to the definitions section.²⁵

Consultation question 1: Do you agree we should extend our enhanced 'fit and proper' assessment questions to all licence application types, not just supply licence applications?

Consultation question 2: Do you agree that the proposed questions in section 12 will enable applicants for a gas or electricity supply licence to demonstrate that they meet the new supply licence application criteria?²⁶

Consultation question 3: Do you have any other comments on the proposed new regulations/application forms, including the updated tiered process or fees? Or, is there anything we have not included that you believe should be?

Application guidance

We intend to publish new application guidance in line with the proposed applications regulations. The proposed drafting for the new guidance can be found in Appendix 3:

- **Assessment of suitability to hold a licence.** Our new criteria for supply licence applications includes a requirement that the applicant is 'fit and proper', or suitable to hold a licence. As set out above we propose that this is a relevant consideration for all licence types. We have included a draft new section in the guidance document to outline how we will take account of any disclosures or information that comes to our attention in respect of the proposed new 'suitability' questions.
- **Assessment of supply licence applications.** In line with the new application criteria we are introducing for supply applicants, and taking account of the feedback from respondents to our November consultation, we have drafted a new chapter on supply licence applications. This is aimed at guiding applicants through the new requirements, and explaining the considerations we will apply when assessing whether their application meets the criteria. There is a positive obligation on the applicant to provide the relevant information to demonstrate that they meet the criteria. Our guidance seeks to ensure that the criteria are clear, and explains to applicants the objective considerations we will apply.
- **New application processing time periods.** We are proposing to amend the time period for processing supply licence applications from 45 working days to 55 working days to reflect the increased information requirements and additional time it will take to process these applications.²⁷

Consultation question 4: Do you have any comments or would you suggest any changes to the section on 'Suitability to hold a licence' (Chapter 3 of the draft guidance)?

²³ More information on 'licence lite' is available on our website (<https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-lite>), including our published guidance (https://www.ofgem.gov.uk/sites/default/files/docs/2015/04/licence_lite_slc_11.3_operating_guidance_0.pdf).

²⁴ Bank/contact details and processing time period information has been moved to the guidance document.

²⁵ Adding reference to Supplier of Last Resort events, and updating the 'related persons' and Point of Single Contact definitions.

²⁶ Namely that the applicant has the appropriate resources for their proposal to enter the market, and understands their regulatory obligations and has appropriate plans in place to meet these.

²⁷ While the information requirements differ, the amended time period will apply equally to licence applications to supply domestic consumers, and licence applications to supply non-domestic consumers only. We consider this is necessary to allow for appropriate oversight as we implement the new supplier licensing procedures.

Consultation question 5: Do you have any comments or would you suggest any changes to Chapter 4 of the draft licence application guidance, relating to the new criteria and process for supply licence applications?

Consultation question 6: Do you have any other comments or would you suggest any other changes to any part of the draft guidance?

How to respond

We want to hear from anyone interested in this consultation. Please send your response to licensing@ofgem.gov.uk by 13 May 2019.

We will publish non-confidential responses on our website. If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Next steps

We will consider all responses to this consultation before publishing a final decision on the new Statutory Instruments and associated guidance. Once the new regulations are made, they will come into effect after not less than 21 days.

Yours faithfully,

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Deputy Director, Licensing Frameworks