

2009 No. 3190

GAS

**The Gas (Applications for Licences and Extensions and
Restrictions of Licences) Regulations 2009**

Made - - - - *3rd December 2009*

Coming into force - - *28th December 2009*

The Gas and Electricity Markets Authority(a), in exercise of the powers conferred by sections 7B (1), (2) and (11) and 47 of the Gas Act 1986(b) makes the following Regulations:

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2009 and come into force on 28th December 2009.

(2) The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2008(c) (“the 2008 Regulations”) are revoked.

Transitional provisions

2.—(1) Where an application has been made under the 2008 Regulations but at the date upon which these Regulations come into force the application has neither been granted nor refused, the application shall be treated thereafter as having been made under these Regulations.

(2) An application to which paragraph (1) applies which conformed to the requirements of the 2008 Regulations and was accompanied by the fee prescribed under those regulations shall not be treated as defective by virtue only of failure in any respect to comply with these Regulations.

(3) Where, in relation to an application to which paragraph (1) applies, the applicant, before the coming into force of these Regulations, published a notice of the application in accordance with the 2008 Regulations, the requirements of these Regulations as regards publication shall be taken to have been met.

Interpretation

3.—(1) In these Regulations —

“the 2000 Act” means the Utilities Act 2000(d);

“the 2004 Act” means the Energy Act 2004(e);

“the Act” means the Gas Act 1986;

(a) The Gas and Electricity Markets Authority was established under section 1(1) of the Utilities Act 2000 (c.27)

(b) 1986 c.44: section 7B of the Gas Act was inserted by section 74(7) of the Utilities Act 2000

(c) S.I. 2008/2375

(d) 2000 c.27

(e) 2004 c.20

“application” means an application for a licence, an application for an extension of a licence or an application for a restriction of a licence under the Act and references to an application in respect of a licence shall be construed accordingly;

“the Authority” means the Gas and Electricity Markets Authority established by section 1 of the 2000 Act;

“domestic premises” means premises used wholly or mainly for domestic purposes;

“extension”, in relation to a transporter licence, means an extension of the licence under section 7(4) of the Act(a) and, in relation to a supplier licence or a shipper licence, means an extension of the licence under section 7A(4) of the Act(b);

“interconnector licence” means a licence granted or to be granted under section 7ZA(1) of the Act(c);

“principal undertaking” means an undertaking within the meaning of section 1161 of the Companies Act 2006(d)

“related person” in relation to an applicant who is a principal undertaking, means a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of the parent undertaking of the principal undertaking, in each case within the meaning of section 1162 of the Companies Act 2006; and in relation to any applicant (including such an undertaking), means a connected person of the applicant within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992(e);

“restriction”, in relation to a transporter licence, means a restriction of the licence under section 7(4A) of the Act(f) and, in relation to a supplier licence or a shipper licence, means a restriction of the licence under section 7A(6) of the Act;

“shares”, in relation to an applicant with share capital, means allotted shares; in relation to an applicant with capital but no share capital, means rights to share in the capital of the applicant; and in relation to an applicant without share capital, means interests (i) conferring any right to share in the profits or liability to contribute to the losses of the applicant; and (ii) giving rise to an obligation to contribute to the debts or expenses of the applicant in the event of winding up;

“shipper licence ” means a licence granted or to be granted under section 7A(2) of the Act;

“signed” includes signed in a manner which would for the purposes of section 7 of the Electronic Communications Act 2000(g) be an electronic signature;

“supplier licence” means a licence granted or to be granted under section 7A(1) of the Act;

“transporter licence” means a licence granted or to be granted under section 7 of the Act; and

“ultimate holding company” means a holding company (within the meaning of sections 1159 and 1160 of the Companies Act 2006(h)) of the licensee which is not itself a subsidiary of another company, which is in the position to control, or exercise significant influence over, a policy of the licensee by virtue of rights under contractual arrangements or rights of ownership which are held by the company or of which the company is a beneficiary.

(2) In these Regulations, unless the context otherwise requires, a reference to a standard condition is a reference, —

- (a) in relation to a shipper licence, a supplier licence or a transporter licence, to a standard condition which is determined under section 81(2) of the 2000 Act(i); or
- (b) in relation to an interconnector licence, to a standard condition which is determined under section 150(1) of the 2004 Act,

(a) section 7 was substituted by section 5 of the Gas Act 1995 (c.45)

(b) section 7A was inserted by section 6 of the Gas Act 1995

(c) section 7ZA was inserted by section 149 of the Energy Act 2004

(d) 2006 c.46

(e) 1992 c.12

(f) section 7(4A) was inserted by section 76(4) of the Utilities Act 2000

(g) 2000 c.7

(h) 2006 c.46

(i) section 81(2) was amended by section 168(10) of the Energy Act 2004

subject to any modifications of the standard conditions made under Part I of the Act, the 2000 Act, or the 2004 Act, after the determination under those sections.

(3) In these Regulations —

- (a) any reference to a numbered Schedule is a reference to the Schedule bearing that number in these Regulations; and
- (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which the reference occurs.

Manner of Application

4. An application shall be —

- (a) made in writing, addressed to the Authority and delivered or sent by prepaid post to the Authority at its principal address or sent by electronic mail to an address specified by the Authority or made by electronic means via the point of single contact website at an address specified by the Authority; and
- (b) signed and dated by or on behalf of the applicant, stating, where signed on behalf of the applicant, the capacity of the signatory.

Form of application

5. An application shall be in the form specified in Schedule 1 or a form to the like effect, and shall contain the information there specified.

Additional information and documents to accompany application

6.—(1) Subject to paragraphs (2), (3) and (4)—

- (a) an application in respect of a supplier licence shall be accompanied by the information and documents specified in Part 1 of Schedule 2;
- (b) an application in respect of a shipper licence shall be accompanied by the information and documents specified in Part 2 of Schedule 2;
- (c) an application in respect of a transporter licence shall be accompanied by the information and documents specified in Part 3 of Schedule 2; and
- (d) an application in respect of an interconnector licence shall be accompanied by the information and documents specified in Part 4 of Schedule 2.

(2) The obligation imposed by paragraph (1) shall, to the extent that information and documents are specified in Schedule 2 by reference to, or in relation to, a standard condition, apply—

- (a) subject to paragraph (3), in the case of an application for a licence, other than for a supplier licence of the type described in section 8(2) of the Act^(a), as if the standard condition in question were to be included and have effect in any licence granted as a result of the application; and
- (b) in the case of an application for an extension or restriction of a licence, in relation to such of the standard conditions in question as have been included and have effect in that licence.

(3) Where a modification to any standard condition is requested in accordance with paragraph 4(1) of Schedule 1, the obligation imposed by paragraph (2)(a) shall be modified accordingly.

(4) The obligation imposed by paragraph (1)(a), (b) and (c) in relation to an application for an extension or restriction of a licence shall only apply to the extent that the information and documents differ from or add to the most recent information and documents provided in relation to an application made in accordance with these Regulations or in pursuance of a condition of the applicant's licence.

(a) section 8(2) was amended by paragraph 2 of schedule 6 of the Utilities Act 2000

Application fees

7.—(1) Subject to paragraph (2), the prescribed fee in relation to an application of the description specified in the first column of the Table in Schedule 3 shall be the corresponding fee specified in the second column of that Table.

(2) Where more than one fee would, but for this paragraph, be payable in respect of a particular application, the prescribed fee shall be the higher or highest such fee.

Publication of notice of application

8.—(1) The period prescribed for the purpose of section 7B(2) of the Act^(a) (notice of applications) is ten working days (“the prescribed period”).

(2) The prescribed manner of publication for that purpose shall be either by—

- (a) requesting the Authority to place the notice on the website address of the Authority (at “www.ofgem.gov.uk” or such other website address as may be notified to the applicant by the Authority in writing); or
- (b) publishing the notice on the website address of the applicant and requesting the Authority to place a link to the applicant’s website address on the website address of the Authority (at “www.ofgem.gov.uk” or such other website address as may be notified to the applicant by the Authority in writing).

(3) Where an application is for the restriction of a licence, the applicant shall also ensure that notice of application is published within the prescribed period in such newspapers as are calculated to ensure that the notice is circulated throughout the area to which the proposed restriction relates.

(4) In this Regulation “working day” shall have the same meaning as in section 64 of the Electricity Act 1989^(b).

The seal of the Gas and Electricity Markets Authority here affixed is authenticated by the signature of



3rd December 2009

Sarah Harrison
A member of the Authority
For and by the Gas and Electricity Markets Authority

(a) section 7B was inserted by section 7 of the Gas Act 1995
(b) 1989 c.29

FORM OF APPLICATION IN RESPECT OF A SUPPLIER LICENCE,
SHIPPER LICENCE, TRANSPORTER LICENCE OR AN
INTERCONNECTOR LICENCE UNDER THE GAS ACT 1986

GENERAL PARTICULARS

1. State—

- (a) name and registered address of applicant in full. In the case of a partnership or other joint venture (other than a body corporate), give the names and addresses of each party concerned.....
.....
.....
- (b) name, address, facsimile number (where applicable), telephone number and electronic mail address (where applicable) of person to whom correspondence or enquiries concerning the application should be directed.....
.....
.....
- (c) where the address provided in paragraph 1(a) is not an address in Great Britain, an address in Great Britain for service of documents
.....
- (d) whether the application is in respect of a supplier licence, a shipper licence, a transporter licence or an interconnector licence [*see note 1*]
- (e) whether the application is for a licence, an extension of a licence or a restriction of a licence [*see note 2*]
- (f) the date from which the licence or extension or restriction is desired to take effect.....
.....
- (g) the kind of gas to which the application relates (for example, natural gas, liquid petroleum gas, coal bed methane).....
.....

Note 1 Application may not be made on the same form in respect of more than one of these types of licence.

Note 2 An application may not be made for the extension or restriction of an interconnector licence, or for the extension of a licence which authorises only the supply to premises of gas which has been conveyed to the premises otherwise than by a gas transporter.

2. State—

(a) whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the legal status).....

.....

(b) where the applicant is a body corporate, —

(i) the jurisdiction under which it is incorporated.....

.....

(ii) if applicable, its registered number and provide an extract from the relevant company registry in which the applicant is registered in its country of incorporation confirming its registration.

.....

(iii) the full names and home addresses of its current directors (including any shadow directors within the meaning of section 251 of the Companies Act 2006) or, where applicable, the corresponding officers.....

.....

.....

(iv) the name and registered office of any ultimate holding company of the applicant and its current directors and the name and registered or principal office of any parent undertaking (within the meaning of section 1162 of the Companies Act 2006) of the applicant.....

.....

.....

(c) where the applicant is neither a body corporate nor a sole trader, the name(s) and address(es) of the person or persons in whom effective control of the applicant rests.....

.....

.....

(d) where any person (other than a person whose name is given at paragraph 2(b)(iv) or paragraph 2(c)) holds 20 per cent or more of any class of the shares of the applicant, the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.....

.....

.....

3. Give particulars of any licences under the Act or the Electricity Act 1989 held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person in relation to the applicant.....

.....

DETAILS OF APPLICATION

4. (1) If the application is for a licence other than a supplier licence of the type specified in section 8(2) of the Act —
- (a) provide details of any modification requested to any of the standard conditions for the type of licence for the purposes of section 8(3) of the Act; and
 - (b) state the grounds on which the applicant believes that—
 - (i) any such modification is requisite to meet the circumstances of the particular case; and
 - (ii) if the application is for a shipper licence or supplier licence, any such modification is such that no other holder of such a licence would be unduly disadvantaged in competing with other holders of such licences (including the applicant).
- (2) If the application is for a supplier licence of the type specified in section 8(2) of the Act, specify, with reasons, any standard conditions that in the applicant’s opinion should be included and have effect in the licence.....
.....

CRIMINAL OFFENCES AND DISQUALIFICATION

5. (1) In relation to criminal offences either—
- (a) give particulars of any criminal convictions of the applicant and any other person specified in paragraph 2(b)(iii), 2(b)(iv), 2(c) or 2(d) (other than for offences under the Road Traffic Offenders Act 1988^(a) or convictions in respect of which the person has become rehabilitated under the Rehabilitation of Offenders Act 1974^(b)); or
 - (b) provide a statement that there are no relevant convictions.
- (2) In relation to disqualification, provide a statement that none of the persons specified in paragraph 2(b)(iii), 2(b)(iv), 2(c) or 2(d) are disqualified to any extent from acting in connection with the affairs of a company.

SCHEDULE 2

Regulation 6

PART 1

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN
APPLICATION IN RESPECT OF A SUPPLIER LICENCE

1. A supplier licence may authorise the holder to supply gas—
- (a) to any premises;
 - (b) only to premises specified in the licence, or to premises of a description so specified; or
 - (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated, (section 7A(1) of the Act).

(a) 1988 c.53
(b) 1974 c.53

Please specify whether (a), (b) or (c) above is applicable. Specify or describe the premises and the location of the premises intended to be supplied, and, in the case of an application that relates to (c) above, also the specified area. Any description must be sufficient to enable the premises, location or areas concerned to be adequately and readily identified by map, or by other means. Also state whether the application relates to domestic premises.

2. For all applications for supplier licences, or extensions of such licences, state whether the licence or extension is to authorise the supply of gas to premises to which it is conveyed by a gas transporter, and if not give details of any exemption under section 6A of the Act under which the gas is or will be conveyed.

RESTRICTION OF A SUPPLIER LICENCE

3. If the application is for a restriction of a licence provide—
- (a) an estimate of the total number of premises to which the applicant supplies gas at the time of the application and which the applicant would cease to supply gas if the application were acceded to; and
 - (b) unless there are, at the date of the application, no relevant consumers (within the meaning of section 7A(10) of the Act) in relation to the applicant, a description of the applicant's proposed arrangements under section 7A(9) of the Act for—
 - (i) ensuring continuity of supply for all such relevant consumers; and
 - (ii) in the case of each such consumer who is supplied with gas in pursuance of a contract (within the meaning of that section), for ensuring that the terms are the same or as similar as possible to the terms in place between it and that consumer immediately before the restriction is to have effect.

PART 2

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A SHIPPER LICENCE

1. A shipper licence may authorise the holder to—
- (a) make arrangements generally with any gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
 - (b) make such arrangements for purposes connected with the supply of gas to specified premises, being—
 - (i) any premises in a specified area;
 - (ii) any premises of a specified description (whether in a specified area or throughout Great Britain); or
 - (iii) particular premises, (section 7A(2) of the Act).

Specify or describe the premises, location of the premises and the specified area, if any, to which the application relates. The description should enable the premises, location or areas concerned to be adequately and readily identified by map, or by other means.

PART 3

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A TRANSPORTER LICENCE

1. A transporter licence may authorise the holder to convey gas—
 - (a) to any premises; and/or
 - (b) to any pipe-line system operated by another gas transporter—
 - (i) throughout Great Britain; or
 - (ii) within a specified area or areas.

Please specify which of (a) or (b) is, or both are, applicable, and, if (b) is applicable, which of (i) or (ii) is applicable, and in the case of (ii) provide a description specifying the area to which the application relates. The description should enable the areas concerned to be adequately and readily identified by map, or by other means. Also state whether the application relates to domestic premises. For applications within paragraph 1(b) above, also specify the description of the pipe-line system to which the application relates (stating, in particular, whether it relates only to any system which is designed to receive gas at an operating pressure not exceeding 7 bar gauge).

RESTRICTION OF A TRANSPORTER LICENCE

2. If the application is for a restriction of a licence provide—
 - (a) an estimate of the total number of premises to which the applicant conveys gas at the time of the application and to which the applicant would cease to convey gas if the application were acceded to (“the relevant premises”);
 - (b) unless there are, at the date of the application, no relevant consumers (within the meaning set out in sub-paragraph (c) below) in relation to the applicant, a description of the applicant’s proposed arrangements to ensure compliance with section 10 of the Act (ensuring the connection of all such relevant consumers is maintained); and
 - (c) for the purposes of sub-paragraph (b), a person is a relevant consumer if—
 - (i) immediately before the restriction takes effect, he is connected to the pipe-line system of the holder of the licence; and
 - (ii) his premises are to be excluded from the licence by the restriction.

PART 4

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF AN INTERCONNECTOR LICENCE

1. An application in respect of an interconnector licence must specify the actual or proposed point of connection to a gas transportation or gas distribution network. Where the applicant is unable to specify a point of connection the applicant should provide Ordnance Survey Grid Reference co-ordinates for the proposed point of connection.
2. In relation to an application for a licence in respect of an interconnector the construction of which was not completed by 3 August 2003, state whether the applicant seeks not to have applied to the licence any or all of the following standard licence conditions —
 - (a) conditions relating to the charging methodology to apply to third party access to the licensee's interconnector;
 - (b) conditions relating to the requirement to offer terms to an applicant for access to the licensee's interconnector.
3. Where the applicant so seeks for any or all of the licence conditions relating to the matters referred to in paragraphs 2(a) and 2(b) above not to be in effect, the following additional information must be provided in respect of those licence conditions —
 - (a) the period of time for which the applicant seeks that the licence condition or conditions not be in effect;
 - (b) a statement setting out the evidence and reasoning as to why the applicant considers —
 - (i) the investment in the interconnector enhances competition in gas supply and enhances security of supply;
 - (ii) the level of risk attached to the investment to be made in relation to the interconnector is such that the investment would not be or would not have been made unless those licence conditions were not in effect;
 - (iii) that, should the licence conditions not be in effect for the period of time sought, this will not be detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the interconnector is connected; and
 - (c) a further statement that —
 - (i) the interconnector will be owned by a natural or legal person who is separate, at least in terms of its legal form, from the system operators in whose systems the interconnector to which this application relates will be built; and
 - (ii) charges will be levied on users of the interconnector.

SCHEDULE 3

Regulation 7

APPLICATION FEES

<i>Description of application</i>	<i>Fee payable £</i>
<i>Supplier</i>	
1. Application for 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 licence including authorisation to supply gas to premises to which gas is, or is to be, conveyed otherwise than by a gas transporter	350
3. Application for any extension or restriction	450
<i>Shipper</i>	
4. Any application	350
<i>Transporter</i>	
5. Application for a licence	1050
6. Application for extension or restriction	150
<i>Interconnector</i>	
7. Application for a licence	1050

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the information, and other documents that are required to be submitted with applications for supplier, shipper, transporter and interconnector licences (and for extensions or restrictions of supplier, shipper and transporter licences) under the Gas Act 1986, as amended by the Utilities Act 2000 and the Energy Act 2004. They specify the form and manner of such applications. These Regulations also set out the manner in which notices of applications are to be published.

These Regulations come into force on 28th December 2009.

Regulation 1 provides for the citation, commencement and revokes the previous Regulations.

Regulation 2 makes transitional provisions for applications made but not determined before the Regulations come into force.

Regulation 3 provides for general interpretation.

Regulation 4 deals with the manner of applications.

Regulation 5 concerns the form of applications, and incorporates Schedule 1 that specifies their form, and the information and documents to accompany them.

Regulation 6 specifies the additional information and documents to accompany applications. It incorporates Schedule 2, which covers, respectively, applications for:

- supplier licences, at Part 1;
- shipper licences, at Part 2;
- transporter licences, at Part 3; and
- interconnector licences, at Part 4.

Regulation 7 incorporates Schedule 3, which specifies the fees payable in respect of applications.

Regulation 8 provides for the notice period and publication requirements for applications. It requires applicants to ensure notice of the application is published either on the Ofgem website or their own website. If the application is for a restriction the applicant must also publish the notice in local newspapers.

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