

Consultation

SoLR Levy Offset

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We are consulting on proposals that could further reduce the costs to consumers upon market exit of an energy supplier, in the interests of consumers. These proposals would aim to recover some of those costs from the failed supplier, including through any insolvency process where the failed supplier has residual value available to pay creditors.

We would like views from people with an interest in the Supplier of Last Resort (SoLR) and Last Resort Supply Payment (LRSP) processes, and the impact of these on consumers. We particularly welcome responses from consumer groups and charities, energy suppliers, electricity and gas distribution networks, and those involved in the insolvency profession. We would also welcome responses from other stakeholders and the public.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). 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.

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Foreword

Energy is essential. When an energy supplier has its licence revoked (for example, when it is financially unable to continue to trade), Ofgem's Supplier of Last Resort (SoLR) safety net makes sure that consumers' gas and electricity supplies are not disrupted. Customers do not need to find a new supplier as Ofgem will switch their accounts to a new supplier without any interruption. It also ensures that that if domestic customers' account balances are in credit, they will get back every pound they held in credit with their old supplier.

Following the appointment of a Supplier of Last Resort, Ofgem manages an industry process which enables the supplier to seek to recover additional costs they face in supplying the transferred customers. This is known as a Last Resort Supply Payment, which is recovered across all consumers.

Ofgem can direct any gas or electricity firm to take on another supplier's customers where that supplier's licence is being revoked: we choose the new supplier following a competitive process designed to get the best deal for consumers.

Nevertheless, failed suppliers can and have resulted in material costs. Ofgem decides on a case-by-case basis whether it is in consumers' interests to consent to SoLRs recovering any costs, and we expect them to demonstrate the steps they have taken to minimise these costs.

Since the energy crisis, Ofgem has strengthened the rules to ensure that suppliers are more resilient to shocks and less likely to fail, as well as to reduce the size of mutualised costs in the event that they do exit the market. Suppliers are required to have capital and liquidity to cover their risks and take action to minimise the extent of costs to be mutualised, which makes them the first line of defence. We have also introduced the requirement for suppliers to ringfence their Renewables Obligation receipts, ensuring this cash is insolvency remote to reduce the cost of mutualisation in the event of failure.

We are now consulting on proposals that could further reduce the costs to consumers upon failure of a supplier, in the interests of consumers. These proposals would aim to recover some of those costs through the insolvency process where the failed supplier has residual value available to pay creditors.



Rohan Churm
Director for Financial Resilience and Controls

1. Introduction

- 1.1 Since the start of the energy crisis in Autumn 2021, 30 retail energy suppliers have failed. Of those, 29 were managed using the Supplier of Last Resort (SoLR) process, and one supplier (Bulb) was placed in a Special Administration Regime (SAR).
- 1.2 The cost of ensuring continued energy supply to the domestic customers of those failed suppliers that went through the SoLR process has amounted to £2.35 billion so far. This figure is not yet finalised as we¹ are continuing to process claims from SoLRs appointed in this period². The net cost of the Bulb Special Administration is currently estimated by the Public Accounts Committee to be £246 million³.
- 1.3 Through network charges, SoLR costs are mutualised across domestic energy consumers in Great Britain through the Last Resort Supply Payment (LRSP) process, also known as a 'SoLR Levy'. The failed supplier does not directly contribute to meeting those costs, although the SoLR can claim the costs of honouring customer credit balances from the failed supplier, including in any insolvency process as an unsecured creditor.⁴
- 1.4 Nonetheless, shareholders of a failed supplier may receive a cash distribution from surplus assets in the company.⁵ This gives rise to a clear fairness issue of shareholders benefitting while consumers pay for the costs of transferring the customers of the failed supplier.
- 1.5 We have already taken several steps to reform the retail energy sector to build a stronger, more resilient market in the interest of consumers. Since 2021 Ofgem has implemented a package of measures to strengthen the financial resilience of retail energy companies. We have introduced:
 - An enhanced licence application process and milestone assessments

¹ In this document the terms "we", "us", "our", "Ofgem" and "the Authority" are used interchangeably and refer to the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

² [Decision letter faster levy process \(ofgem.gov.uk\)](#)

³ [Bulb Energy: Will billpayers remain on the hook for multi-billion pound bail-out? - Committees - UK Parliament](#)

⁴ Customer credit balances can be claimed in the insolvency *following Croxen & Others v GEMA & Others [2022] EWHC 2826*

⁵ This can be the case even where the supplier's licence was revoked on the grounds of its insolvency. Notwithstanding its insolvency at that time, once the licence was revoked and its obligations under it removed, assets may be realised that increase the funds available to pay creditors and in some circumstances result in the company being solvent

- Rules to require licensees to have sufficient control of their assets
- Enhanced monitoring of supplier finances including stress testing, a proactive reporting framework of Trigger Points, and Annual Adequacy Self-Assessments.
- Renewable Obligation receipts ringfencing
- A capital adequacy framework, including requirements that suppliers have sufficient capital and liquidity to meet their needs, and common minimum capital requirements, due to take effect from 31 March 2025.
- Licence modifications to direct Customer Credit Balance ringfencing when it is in the consumer interest to do.

1.6 These reforms will benefit consumers by ensuring a better balance of risks between supply licensees and consumers and, in doing so, reduce the likelihood and cost of widespread failures. However, there remains some risks and fairness issues regarding mutualised costs.

What are we consulting on?

1.7 We are seeking views on a new proposal for a 'SoLR Levy Offset'. This follows on from proposals first set out in our June 2022 consultation on Strengthening Financial Resilience. The aim is to recover from failed suppliers (including through the insolvency process) some of the costs that failed suppliers cause. We would create licence and contractual arrangements such that another party would have a legitimate claim for SoLR Levy costs against a failed supplier. The debt would rank as an unsecured claim in supplier insolvencies. If funds are available to pay the claim, it could provide significant benefit to consumers by enabling any recovered funds to flow back to consumers through lower network charges, and therefore lower bills. If adopted, this change would only apply to future supplier failures and could not be applied retrospectively to the failures of 2021.

1.8 A supply licence can be revoked on a number of grounds set out in Schedule 2 of the supply licence. Often the ground of revocation is that the supplier is unable to pay their debts but revocation can also occur, for example, where a supplier has not complied with enforcement notices (provisional order or final order). For the purpose of this consultation, we talk about "failed suppliers" to mean any supplier that has its licence revoked in circumstances where it has been necessary for Ofgem to direct another supplier to supply the customers (i.e. not where there is a trade sale nor where the business has been wound down and the licensee is no

longer supplying customers or never supplied customers under the licence). In most cases the supplier (or one of its creditors) will commence an insolvency process.

Structure of the consultation

1.9 The consultation is structured as follows:

- Section 2 sets out background on the SoLR Levy process and explains the problem we are trying to address. It also sets out related actions we have already taken to address risks arising from supplier failures.
- Section 3 explains our proposal for a SoLR Levy Offset.
- Section 4 describes the draft deed and licence changes that would be required.
- Section 5 goes through the potential impacts of the proposal.

Consultation stages

1.10 This consultation closes on 5 April 2024. We intend to publish a decision later this year. If that decision is to proceed, we would also issue a statutory consultation on implementation measures such as licence changes.

Summary of consultation questions

1.11 Q1. Do you agree with our problem statement?

Q2. What are your overall views on whether the proposal would deliver on the aims of the SoLR levy Offset?

Q3. What are your views on the proposed option of network companies being creditor, as opposed to other alternatives.

Q4. What are your views on the creditors ranking in the insolvency waterfall as unsecured creditors and do you think another classification would be more appropriate?

Q5. What are your views on the creditor claim being contingent on a valid claim being made by a SoLR for a LRSP? Do you think that the creditor claim could be formulated or calculated in another way?

Q6. What are your views on the deed as it is currently drafted?

Q7. What are your views on the proposed license changes for suppliers and networks? Please identify any factors relating to the drafting of license changes that we should consider at this stage.

Q8. Have we identified the key impacts, risks and benefits of the SoLR Levy Offset, and are there any impacts we should give further consideration to? Do you think that overall this would be of benefit to consumers?

How to respond

- 1.12 We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document's front page.
- 1.13 We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.14 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, data and confidentiality

- 1.15 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 1.16 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.17 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 3.

1.18 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

1.19 We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)

2. SoLR Levy process and problem statement

Section summary

In this section we explain how the existing SoLR Levy process works, including the temporary multi-claims process we put in place in response to the recent energy crisis. We also set out what we are seeking to address: the fairness and cost impacts arising when a supplier's failure puts significant costs on consumers.

Questions

Q1. Do you agree with our problem statement?

Overview of the SoLR process

- 2.1 When suppliers want to exit the energy market, we expect them to do so in an orderly fashion (in line with Standard Licence Condition 4B). They will usually attempt to transfer their customers to another supplier through a trade sale in the first instance. For suppliers that leave the market in an urgent or unplanned way, for example due to serious financial difficulties and where a trade sale cannot be achieved, we have powers we can use to step in and protect domestic and business customers.
- 2.2 These powers include appointing a 'Supplier of Last Resort' ('SoLR'), which is another licenced supplier that takes on the customers of the failed supplier. If this is not feasible, we can also apply to the Court (with the government's consent) for an 'Energy Supply Company Administration Order' which would result in an insolvent supplier continuing in business within a 'Special Administration Regime' ('SAR').
- 2.3 When a SoLR is appointed, it is directed by Ofgem to supply customers of the failed supplier. No assets or contracts of the failed supplier are transferred to the SoLR, such as any hedging arrangements the failed supplier had.⁶
- 2.4 We use a competitive process to appoint SoLRs. We have regard to a range of criteria when selecting a SoLR to appoint, and the criteria may vary depending on the circumstances of the failure. As part of the competitive process we ask that suppliers set out to us a range of information on what will occur if they take on

⁶ This is different to a SAR, where the entity continues to trade in administration until a new owner is appointed.

the customers of the failed supplier. This includes indicating to us if they will seek to be reimbursed for the costs incurred in onboarding and supplying the customers of the failed supplier, as is this one of the criteria we may take into account. Preference will normally be given to those suppliers who state that they will not make a claim for these costs, although we may depart from this depending on the specifics of the situation.

- 2.5 SoLRs may therefore cover some or all of the costs themselves, but otherwise they can make a claim to us for a Last Resort Supplier Payment (LRSP), often referred to as a 'SoLR levy claim'. The costs are initially paid by the electricity and gas distribution networks (also referred to in this document as 'the networks') once Ofgem has consented to the claim. Through network charges, these costs are ultimately paid for by domestic energy consumers in Great Britain.
- 2.6 We only consent to SoLR levy claims that are for costs reasonably incurred by SoLRs in onboarding the customers of the failed supplier and supplying energy to them. The large number of failures arising out of the energy crisis, combined with the high energy prices SoLRs faced in taking on customers, means that since December 2021 we have consented to SoLR levy claims to the total value of £2.35 billion. These costs have equated to approximately £83 per household.

SoLR levy claims process

- 2.7 We assess any SoLR levy claims against our published criteria. To meet the requirement of being 'reasonably incurred' the costs must be additional, otherwise unrecoverable, directly incurred, and economic.⁷ For all claims we publish decision documents with the outcome of our assessment and reasons for our decision.
- 2.8 We also issue consent documents which provide the legal basis for the SoLR to make a claim for payment from the networks.⁸ The networks pay SoLRs the claimed amount; consents issued by Ofgem before the agreed deadline⁹ allow payments to commence from the following April. The networks then recover the amounts paid to the SoLR from consumers through adjustments to network charges. Network charges are included in electricity and gas bills, and are set by

⁷ These criteria are set out in, for example, [Decision on the last resort levy claims true-up process](#) (see page 17)

⁸ [Decisions on Last Resort Supply Payment Claims 2023 | Ofgem](#) These decisions and consents are for claims completed in 2023 and therefore do not represent all SoLR levy claim decisions.

⁹ In 2021, 2022 and 2023 the deadline agreed was in December.

suppliers. These charges are included in the energy price cap that we review and set every three months.

Temporary multi-claim process

- 2.9 In response to the energy crisis, we implemented a temporary multi-claim process¹⁰ in Autumn 2021 in order to enable costs to be recovered by SoLRs sooner after appointment.
- 2.10 The multi-claim process means a SoLR can submit an initial claim¹¹ to facilitate the faster recovery of costs incurred, followed by subsequent claims for any further costs. As part of this the SoLR enters into a true-up agreement with us which ensures that once all costs are incurred and evidenced, the full amount recovered reflects the amount that meets our criteria. In some cases, this could mean a SoLR needs to repay costs that were recovered at earlier stages of the multi-claim process.

Problem statement – seeking to offset SoLR levy costs

- 2.11 Through increases to their bills, all domestic energy consumers in Great Britain pay SoLR levy costs. At present the failed supplier is not responsible for these costs even though they are caused by the supplier's inability to continue to supply its customers.¹² At the same time, contracts entered into for the purpose of supplying customers can terminate and, in some cases, realise value for the company. Once appointed, an insolvency office holder (the administrator and/or liquidator) will realise the assets and they will be used to pay creditors and the costs of the insolvency process. Where there are surplus assets in a company (after creditors and the costs of an insolvency process have been paid in full) this surplus belongs to the failed supplier's shareholders.
- 2.12 Therefore, failure of a domestic energy supplier can impose significant costs on consumers, the failed supplier does not have to contribute to these costs, and in some cases the shareholders of the failed supplier may benefit from the surplus value of the failed supplier's assets.

¹⁰ [Decision letter: faster levy process \(ofgem.gov.uk\)](#)

¹¹ Initial claims submitted in December 2021 comprised primarily of wholesale costs. We consented to over £1.8b, which SoLRs started collecting payments for in April 2022.

¹² The one exception is customer credit balances that the SoLR has honoured and the failed supplier would otherwise owe to its customers. These can be claimed by the SoLR in the failed supplier's insolvency process.

- 2.13 This raises two linked issues:
1. Impact on consumers: the cost of SoLR levy claims are paid for by consumers.
 2. Fairness: Currently the failed supplier carries limited responsibility for the cost of transferring its customers to a SoLR. In some cases, there might even be a surplus after creditors and the costs of the insolvency process have been paid in full, which could mean a return to the shareholders of the failed supplier.
- 2.14 To mitigate these issues, we are seeking to offset the SoLR levy costs by requiring that failed suppliers are responsible for some of the costs caused by their failure. We are proposing that suppliers be required to commit to arrangements that would, in the event that the supplier fails and a SoLR has to be appointed, create an obligation to pay the distribution network companies the amount of the SoLR levy claim. There would be a contractual debt due from the failed supplier owed to the networks for the costs of the SoLR levy claim. The networks would be able to claim as a creditor of the failed supplier in any insolvency process, in which case the claim would be paid alongside other unsecured creditors and before shareholders receive a return on their investment. We are calling these proposed arrangements the 'SoLR Levy Offset'.
- 2.15 In reducing costs and ultimately bills, we believe that this proposal would benefit consumers, consistent with our principal objective of protecting existing and future consumers. It aligns with the Fair Prices objective in our consumer interests framework.¹³

Further context on our work to strengthen retail financial resilience

- 2.16 The introduction of a SoLR Levy Offset mechanism should be considered as complementing the wider package of policies Ofgem has introduced to strengthen financial resilience. The objective of our financial resilience toolkit is to reduce the likelihood of supplier failure and the impact on consumers when failures do occur. We have introduced capital adequacy requirements, RO ringfencing, Customer Credit Balances (CCB) ringfencing in certain circumstances, enhanced and

¹³ Our consumer interest framework can be found on page 8 of [Forward Work Programme 2023-24 \(ofgem.gov.uk\)](https://www.ofgem.gov.uk)

proactive reporting, and asset control requirements. The SoLR Levy Offset mechanism aims to further reduce the impact on consumers by reducing mutualised costs, as well as improving the fairness of the SoLR levy mechanism.

- 2.17 Ofgem has already introduced requirements for suppliers to have sufficient control over their material and economic assets. Sufficient control over material assets means that suppliers have direct ownership or legally enforceable rights over their material assets so that they are able to rely on them legally and enjoy the benefit of them. This rule aims to reduce mutualised costs by ensuring assets are available to the administrator in the event of insolvency but also reduce the risk of failure by ensuring the licensee has control over the assets they need to run a financially responsible supply business.
- 2.18 Ofgem has also introduced other measures to reduce the risk and cost of supplier failure, which include capital adequacy requirements, a common minimum capital requirement for suppliers, so that they have a financial buffer to absorb severe but plausible shocks, and the requirement to ringfence domestic Renewable Obligation (RO) receipts, so they aren't misused as working capital. These requirements complement the other requirements in the Financial Responsibility Principle (FRP), which obliges all suppliers to evidence that they have sufficient capital and liquidity to manage business specific risks and so that their liabilities can be met on an ongoing basis. The FRP also places a requirement on suppliers to submit an annual adequacy self-assessment, evidencing how they are compliant with it.
- 2.19 Together, these reforms provide an important foundation for the SoLR Levy Offset mechanism, by ensuring there are some assets available to creditors in the event of insolvency.

Previous consultation

- 2.20 Our June 2022 consultation on Strengthening Financial Resilience included proposals aimed at preserving the value of hedged energy when a supplier fails and using this to address the cost and fairness issues outlined above. The consultation explored two options, the 'Licence Change' and the 'Contractual Change' approaches. The Licence Change approach proposed that proceeds of 'in-the-money' hedges, once liquidated, would be paid into a trust. In the event of supplier failure, the appointed SoLR could use proceeds to cover the costs of purchasing wholesale energy. The Contractual Change approach required suppliers to include an obligation in customer contracts, that in the event of

failure, the failed supplier would pay a SoLR (acting on behalf of customers) an amount up to the costs incurred.

- 2.21 Respondents to that consultation agreed with the intent behind the proposals, but raised practical concerns about how both options proposed would work.
- 2.22 In particular, there were concerns that the Licence Change option applied an overly simplistic view of how hedging worked, and could have unintended consequences, including negative impacts on hedging strategies, credit ratings and the costs of debt.
- 2.23 Although there was more support for the Contractual Change option, this was based on a comparison of the two options rather than merits of the contractual change option itself. Respondents identified potential unintended consequences on hedging strategies. Further, we recognised that this option could also be convoluted and potentially confusing for customers, who would have had a right to claim as creditors written into their contract terms, rights that would in fact have vested in other parties.
- 2.24 A summary of responses to the consultation can be found in Appendix 1. We do not consider that the two options consulted on previously are viable options.
- 2.25 Since the June 2022 consultation we have reviewed and developed our proposals, and have developed the SoLR Levy Offset model, which we set out in detail below.

3. Outline of the SoLR Levy Offset proposal

Section summary

This section explains our proposal for a SoLR Levy Offset. It sets out detail on how we envisage it would work, who would be a creditor under the arrangements, and how it would sit alongside the existing SoLR Levy process.

Questions

- Q2. What are your overall views on whether the proposal would deliver on the aims of the SoLR levy Offset?
- Q3. What are your views on the proposed option of network companies being creditor, as opposed to other alternatives.
- Q4. What are your views on the creditors ranking in the insolvency waterfall as unsecured creditors and do you think another classification would be more appropriate?
- Q5. What are your views on the creditor claim being contingent on a valid claim being made by a SoLR for a LRSP? Do you think that the creditor claim could be formulated or calculated in another way?

Overview of proposed SoLR Levy Offset

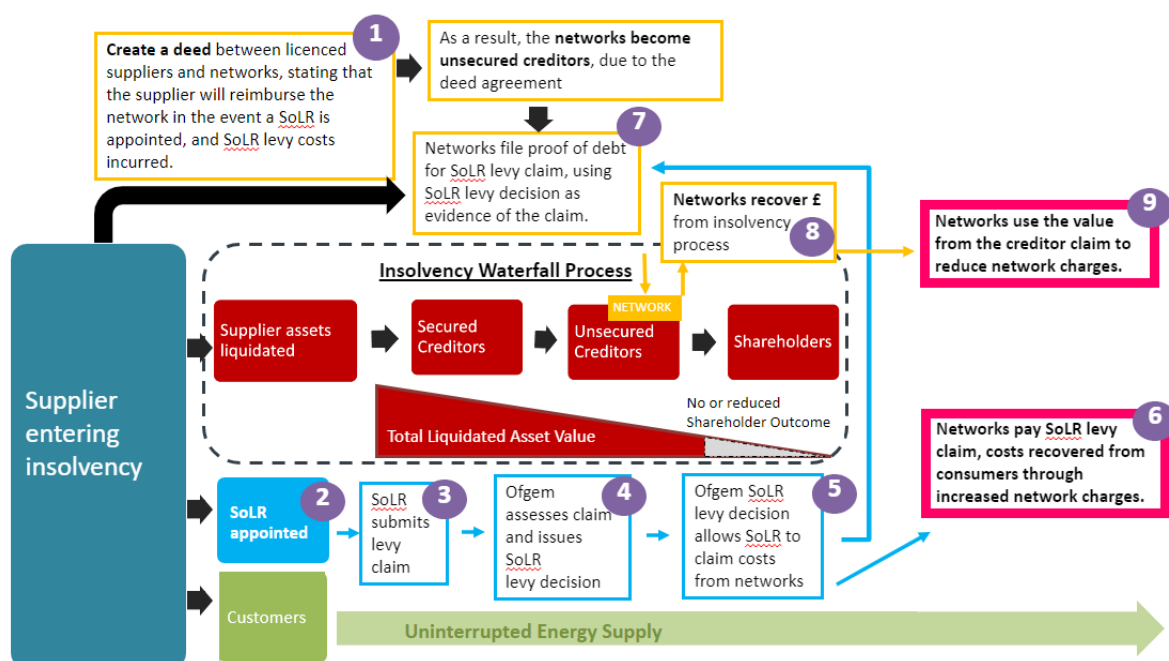
- 3.1 The proposed SoLR Levy Offset would create a way for gas and electricity distribution network companies to recover funds from a failed supplier including as a provable claim in an insolvency process. Any monies recovered from the failed supplier would be returned to consumers through lower future network charges, which will result in lower energy bills. For our preferred approach, to give the arrangements effect we would introduce new standard licence conditions for both suppliers and networks.
- 3.2 The new supplier licence conditions would require all suppliers to enter a deed under which the supplier would agree (by way of an undertaking) to pay to the network, the amount claimed from the network by a SoLR to cover the costs incurred in ensuring continued supply to the supplier's customers in the event that it fails (excluding customer credit balances). These new licence conditions would apply to all current and future licenced suppliers.

- 3.3 The new Electricity Distributor and Gas Transporter licence conditions would provide for money recovered under the deed to be applied to a reduction of network charges.
- 3.4 We think that the debt should become due to the network companies under these arrangements, and we therefore referred to this as our preferred proposal. However, it is worth considering whether the debt could become due to any other parties instead, where it would achieve the same outcome (i.e. recovery of SoLR levy costs from failed suppliers for the benefit of consumers). Later in this section we set out the reasons we think networks should take on the role, and we compare the potential alternative parties.

SoLR appointment process and SoLR levy claim

- 3.5 The proposed SoLR Levy Offset would not change the SoLR appointment process. Upon a supplier failure, a SoLR would be appointed to supply the customers of the failed supplier.
- 3.6 If the SoLR submits a levy claim, we would assess it, consult on and make a decision, and consent to the SoLR receiving payment from the relevant networks. Payments from the networks to the SoLR for any amount claimed would be in accordance with current timescales. As we explain further below (see paragraphs 3.40-3.43), to make the SoLR Levy Offset work, we would need to make the multi-claims process that is currently in place permanent.
- 3.7 As the obligation on failed suppliers, under the terms of the deed, will be to pay SoLR levy costs that are claimed by a SoLR, the amount of that claim will not be known until the SoLR levy claim is consented to. Our consent will evidence the amount of the debt and so the networks would use this to support their claim against the failed supplier and their “proof of debt” in the insolvency of the failed supplier. Practically, this creditor claim would need to be made before there is a distribution to creditors in the insolvency process of the failed suppliers in order to maximise recoveries.
- 3.8 Where a SoLR decides not to make a SoLR levy claim, the networks’ claim against the failed supplier would be nil and the networks would not need to make a claim from the failed supplier or in its insolvency process as no costs will be passed on to consumers.
- 3.9 In parallel, the insolvency process continues as normal. The effect of the SoLR Levy Offset in a failed supplier’s insolvency is illustrated below in Figure 1.

Figure 1: SoLR Levy Offset: Network as Creditor under the terms of a Deed



Role of networks

3.10 Under the SoLR Levy Offset we are proposing that the gas and electricity distribution networks would be creditors of the failed supplier and be able to make a claim as such in the failed supplier’s insolvency process. SoLR levy claims would continue to be paid to the SoLR by the networks (and recovered from consumers through network charges). Networks would in parallel claim as unsecured creditors in the insolvency process of the failed supplier by filing a proof of debt for the same amount as the approved SoLR levy claim. The networks may also be a creditor for sums due under their existing arrangements with suppliers, and so this SoLR levy debt would be an additional and separate claim.

3.11 We think that the SoLR Levy Offset would create three primary areas where networks would need to undertake new activity. These are: claiming the amount due from the failed supplier which will require a “proof of debt” to be lodged in the insolvency process of the failed supplier; receiving Deeds of Undertaking from suppliers; and using any funds received from the failed supplier to offset network charges.

- 3.12 Under the current processes, the networks are not aware if a SoLR intends to make a levy claim. We would need to notify the networks when a SoLR had been appointed and intended to make a SoLR levy claim; this could take place shortly after the SoLR appointment process had been completed. We anticipate that the networks would engage with the insolvency office holder of the failed supplier soon after the failed supplier's license had been revoked, to give them notice of an intention to claim. This would be followed up, once a SoLR levy claim decision is made, with the claim itself.
- 3.13 Currently, SoLR levy claims are paid by all distribution networks (both gas and electricity), and at this stage we are proposing that all networks receiving such a claim would, in turn, submit claims to the administrator and/or liquidator of the failed supplier. We considered whether there is value in specifically designating a 'lead' network that would have the benefit of the suppliers' undertakings, make a claim in reliance on the undertaking, and then distribute funds received from the failed supplier's estate to each of the networks. This would add a level of complexity to the arrangements without clear benefit. Our preferred approach, and what we are currently proposing, is a simpler arrangement where the deed contains an undertaking from suppliers to all electricity and all gas networks and not a 'lead' network. Therefore, all the networks would submit separate claims to the administrator and/or liquidator. Each network will prove its own claim in the failed supplier's insolvency. This would be for the amount that the SoLR had claimed from it. That said, networks might choose to have an informal lead amongst themselves to help with coordination and minimise administrative duplication.
- 3.14 Any monies received by network operators from the insolvency process of the failed supplier would be passed through in the use of network charges thereby reducing those charges (in the same way that the SoLR levy claims are passed through in these charges in the first instance and increase these charges). Where money is received, we do not envisage that networks would recalculate charges already set; the money should be used to offset network charges when they are next set. This represents no change to the current arrangements.
- 3.15 In most cases, we do not think the process for making a claim in the insolvency process would result in material costs for the network companies. Where costs may be material, we would look to ensure the network companies can recover the efficient costs of taking on this role. We welcome views from network companies on the likely materiality of any costs and potential recovery mechanisms.
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3.16 We explore further the potential impact on networks of taking on this role in Section 5 below.

Alternative parties considered as creditors

3.17 We consider that creating a debt due to the networks is the most effective method to implement this policy. Firstly, networks are already involved in the process, as SoLRs submit claims to the networks up to the amount that Ofgem has consented to. This creates a natural place for the debt to sit, since the networks must pay the Levy claim to the SoLR; the cost 'crystalises' with the networks. Secondly, distribution networks have a level of continuity, in that the number and identities these networks do not change frequently.

3.18 We set out below the alternative parties that we have considered could be creditors, and why we do not think these other options are easily workable. We welcome views on this assessment. In assessing all of the options, we have broadly considered two factors:

- The need for claims to be clear for the purpose of administrators/liquidators adjudicating upon them.
- The Principal Objective sets out that we should carry out our functions in a manner best calculated to promote economy and efficiency on the part of all licence holders.

Appointed SoLR as the creditor

3.19 We considered the possibility of SoLRs being the creditor under the terms of the deed. We are not proposing this for the following reasons:

- Any arrangement between suppliers would have to be entered into prior to an insolvency, in order to create a pre-existing obligation on failed suppliers. At that time, the identity of the supplier that will act as SoLR for another supplier would not be known. Therefore all suppliers would have to enter into multi-lateral contractual arrangements with every other supplier which adds a layer of complexity. In addition to making and receiving contractual promises at the outset, each new supplier would have to enter into the arrangement and receive from every other supplier in the market a commitment to pay to them any SoLR levy costs incurred. While we are not minded to pursue this due to the increased complexity, it may be possible to explore whether an industry code could be modified as a mechanism to create an obligation on the failed supplier to pay the networks (or another party) in the event of the supplier
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failing, a SoLR being appointed and SoLR levy costs being incurred. We welcome views on this approach.

- This approach would create a further administrative step, compared to if the networks are the creditor. To ensure that SoLRs can make their SoLR levy claims and so that the consequent claims in the administration or liquidation of the failed supplier is clear and unambiguous, Ofgem will need to consent to the claim as usual. Therefore, the claim will be submitted to the networks and become a valid claim before any recoveries are made from the failed supplier. Funds recovered by a SoLR would have to be redistributed to customers through the networks, in the same way that the SoLR levy costs are paid for.
- Similarly, this would add another party into the process unnecessarily. The SoLRs pass the costs they incur onto the networks. It is with the networks that the costs crystallise, on the submission of a valid claim. Having been paid by the networks, the SoLR would be effectively acting as agent for the networks in recouping the costs that the networks have paid to the SoLR. Any recoveries would have to be returned to the networks.
- Although SoLRs can already claim, as a subrogated creditor, for CCBs, the nature of the claim is different to the claim we are proposing for other SoLR levy costs (such as a for wholesale costs, or administrative costs). The type of claim is different: once the SoLR has honoured a CCB, it can submit a claim to the administrator or liquidator. With the non-CCB SoLR levy costs, the SoLR would need to wait until Ofgem had issued a decision, before then submitting a claim to the administrator or liquidator; in this way, the non-CCB claim is dependent on the SoLR levy decision. We set out in the position in relation to CCBs in more detail below at paragraphs 3.44-3.48.
- Whilst the retail energy market is now far more stable than it was in 2021, it remains possible that a SoLR could itself fail meaning that any sums recovered for the intended benefit of consumers could be lost.

3.20 In summary, our minded to position is that attempting to make all suppliers (including future suppliers) potential creditors would be more complex, less robust (because it is less certain of operating effectively), carries a greater risk of customers ultimately losing out and doesn't avoid the need for network engagement.

Transmission Networks or the Future System Operator as the creditors

- 3.21 We considered the possibility of Transmission Networks being the creditor in the deed. We are not proposing this option for the following reasons:
- Based on the current SoLR Levy process, the debt triggered after the supplier fails would crystallise in the distribution networks. Assuming this remains the case, transmission networks being a creditor would create an unnecessary step in the process, and they would need to return any amount recovered to the distribution networks in order for it to be returned to customers.
 - We could consider reviewing whether SoLRs should recover their approved costs from transmission rather than distribution networks. While this could result in fewer parties being creditors, it would entail significant work to recast the SoLR Levy away from distribution. This would be a significant change in itself, and would require consideration of the impacts that putting the SoLR Levy through transmission charges might create. It therefore seems unlikely that such a review would result in better outcomes for consumers.
- 3.22 We also considered whether the Future System Operator could be the creditor. Doing so would raise similar issues as set out for transmission networks, where the benefits case isn't obvious. In addition, since the Future System Operator is still in development, it is difficult to assess how this role might fit with its composition.

Ofgem as creditor

- 3.23 We considered the possibility of Ofgem acting as the creditor in the deed. We are not proposing this for the following reasons:
- Fundamentally, as a regulator, we consider that our role is to enforce compliance with regulatory requirements. With regards to the SoLR levy process, Ofgem's role is to assess, and where appropriate, consent to a claim. We also consider that there is potential for conflict of interest if Ofgem were to hold both the role of assessing the claim, and in undertaking the role of creditor, stand to recover money from the failed supplier.

- We do not currently have the power to undertake this role; in order to do so, we would need to gain approval from HM Treasury, and it is not certain that relevant requirements would be met¹⁴.
- LRSPs do not pass through Ofgem. If repayments were collected by Ofgem, it would have to act as a trustee for another party, most likely the networks, requiring trust arrangements to be put in place.
- Even if Ofgem could act as a creditor, funds recovered would have to be redistributed in the same way that the costs of SoLR were paid for; that is, through network charges. Ofgem acting as a creditor would merely add an additional step in the process.

3.24 We would welcome feedback on these proposals, including our conclusion that distribution networks are the most appropriate party to be a creditor for the amount of the SoLR levy claim, and any alternative suggestions about other parties that be a creditor under the proposed arrangements.

Insolvency process and creditor status of networks

3.25 The proposals do not seek to change the process followed when a supplier enters an insolvency process; the insolvency process continues as normal, this proposal creates a debt due to the networks such that they will be a creditor in the insolvency process for the recovery of SoLR levy costs.

3.26 We are proposing that networks will be unsecured creditors in the insolvency waterfall.¹⁵ We believe that setting up the model in this way, rather than seeking to attach a higher priority to the claim, is less likely to have unintended consequences, as the networks' claim will not affect secured creditors' claims. However, we recognise that implementing this process could have an impact on other unsecured creditors, particularly in the event of a significant SoLR levy claim.

3.27 Establishing a claim for the networks which ranks further up the insolvency waterfall may have negative consequences for suppliers, such as more difficulty

¹⁴ Treasury approval is required for non-statutory commitments which are novel, contentious or repercussive, as set out in Managing Public Money: [Managing Public Money May 2023 \(publishing.service.gov.uk\)](#)

¹⁵ The usual "waterfall" of payments to creditors is broadly as follows: 1. Fixed charge creditors; 2. Expenses of insolvency proceedings; 3. Preferential creditors (e.g. certain employee claims and certain Crown debts); 4. Floating charge creditors; 5. Unsecured provable debts; 6. Statutory interest on debts; 7. Postponed debts 8. Non-provable debts. The surplus is then returned to shareholders.

in attracting investment or higher borrowing costs. Additionally, it may be difficult for networks to achieve secured creditor status where a supplier already has secured lending and where bespoke arrangements could be required. We consider that if network operators were secured creditors this would have benefits for consumers in terms of the SoLR Levy Offset and potential returns, but attempting to achieve this through licence change would be outweighed by the negative effects, for which consumers ultimately may have to pay indirectly.

- 3.28 We have also considered the possibility of subordinating the networks' claim; however, we do not consider that this is the best option to achieve the aim of this policy, as we expect that subordinating the claim would limit the amount that can be recovered and ultimately the benefit that can be achieved for consumers. Our policy aim is that if there are funds available, then the failed supplier should be liable for SoLR levy costs.
- 3.29 We think that network operators ranking as unsecured creditors would limit negative effects while allowing prospect of offsetting some of the costs of the SoLR levy claim.

Contingent debts

- 3.30 We are proposing that the SoLR levy debt would arise under an obligation in a deed entered into by all licensed suppliers whilst they are trading. Liability would only arise under this obligation if the supplier's licence is revoked, another supplier is directed to be the SoLR, and if this SoLR supplier then makes a SoLR levy claim. Any debt arising under this obligation will be a debt in the insolvency process of a failed supplier¹⁶. Therefore, whilst the obligations under the deed pre-exist revocation of supply licence, the liability under the deed would be subject to two conditions:
1. Revocation of the failed supplier's supply licence and the appointment of a SoLR;
 2. A SoLR levy claim being made and consented to by Ofgem.
- 3.31 Debts arising under obligations that pre-exist a company's insolvency but are contingent on certain events occurring, such as those set out above, are provable in insolvency processes¹⁷. As the amount of the debt will be unknown until a SoLR

¹⁶ Rule 14.1 Insolvency (England and Wales) Rules 2016/1024

¹⁷ Rules 14.1(3) and 14.2(1) Insolvency (England and Wales) Rules 2016/1024

levy claim is made, the insolvency office holder will need to estimate the amount of the debt and revise the estimate when further information as to the value of the debt becomes available. As SoLR directions typically last 6 months we would expect the SoLR to be in a position to submit an initial claim shortly after the end of that period and we set out our thoughts on the timings of claims in paragraphs 5.13-5.14 below.

- 3.32 We would therefore expect the networks to be able to file a proof of debt early on in the insolvency with the amount of the claim to be confirmed and then update the proof as SoLR levy claims are made.

Note on Scottish insolvency rules

- 3.33 Contingent debts are treated differently in Scottish insolvency processes, where such claims are not automatically provable¹⁸. However, we would expect Scottish administrators and liquidators to work with the SoLR and networks to value the debt at the earliest opportunity.

Timings of insolvency claims and impact on the SoLR Levy Offset

- 3.34 Where an office holder (in an insolvency process in England and Wales) intends to distribute funds (on an interim or final basis) they must give notice of (and advertise) this intention to creditors (or, in a winding up, just to known creditors that have not proved) stating the last date for proofs of debt to be delivered. At least 21 days' notice must be given. The insolvency office holder can, but does not have to, accept a proof delivered after the last date for proving. Creditors proving late are entitled to be paid out of funds available for further distributions¹⁹.
- 3.35 An administrator is not entitled to make a distribution to creditors who are neither secured nor preferential (save in respect of the prescribed part²⁰) without an order of the Court²¹ and so a company is likely to go into liquidation before distributions are made to unsecured creditors. It is, therefore, likely that any

¹⁸ Rule 3.112 Insolvency (Scotland)(Company Voluntary Arrangements and Administration) Rules 2018/1082 and rule 7.23 Insolvency (Scotland) (Receivership and Winding up) Rules 2018/347

¹⁹ Chapter 3 of Part 14 of the Insolvency (England and Wales) Rules 2016/1024.

²⁰ Office holders are required to make available to unsecured creditors a prescribed percentage of the company's net property that would otherwise be available to satisfy the claims of holders of floating charges – see section 176A of the Insolvency Act 1986.

²¹ Paragraph 65 of Schedule B1 of the Insolvency Act 1986.

distribution will be made at least a year (and usually a lot longer) after the supplier failed.²²

Link between insolvency process and SoLR levy process

- 3.36 As set out in Figure 1, the failed supplier's insolvency process would be working in parallel with the SoLR process and SoLR levy claim: these processes proceed as usual. Throughout, the customers of the failed supplier have an uninterrupted energy supply.
- 3.37 In our experience, the insolvency process of a failed supplier can take several years but an outstanding claim for the SoLR Levy Offset would not hold up the SoLR levy process. Delays to SoLRs receiving payments for the costs incurred could increase their working capital costs, and could also act as a disincentive for suppliers to volunteer as SoLRs.
- 3.38 Current licence conditions provide for SoLR levy claims to be made within 5 years, or within a time otherwise specified by Ofgem. If claims take up to the full 5 years to be made, there is a risk that the failed supplier's insolvency process will have come to an end and/or asset realisations distributed to creditors by the insolvency office holder, meaning that there will be no assets from which the network's claims can be paid.
- 3.39 We may therefore need to direct SoLRs to submit a claim within a timeframe that we consider necessary to ensure that the networks are able to participate in any distribution of funds to creditors made by the insolvency office holder of the failed supplier. This is allowed for under the current licence condition SLC 9.3.
- 3.40 If we were to set timeframes for SoLRs to submit claims, we consider that the multi-claim process would need to be made permanent. This is because requiring SoLRs to submit SoLR levy claims within a set timeframe introduces the risk that SoLRs would not be able to evidence the full costs incurred (and would therefore not be able to successfully claim for those full costs).
- 3.41 Using the multi-claim process a SoLR could make an initial claim, which could form the basis of the proof of debt in an insolvency process, and then follow this up with a true-up claim which would increase the claim made under the proof of

²² In Scottish Administrations, any distributions are made in accounting periods that are usually 6-month periods and are made in respect of claims submitted for adjudication no later than 6 weeks before the end of the period.

debt. Using the multi-claim process would not prevent SoLRs claiming for all reasonable costs incurred, some of which may not be known in the immediate period after appointment.

- 3.42 We recently took the decision to extend the temporary multi-claim process.²³ We are due to review the process again in 2024. If we decide to implement the SoLR Levy Offset, we would need to make the multi-claim process permanent. Due to the urgency with which it was set up, the multi-claim process has been dealt with so far by contractual arrangements, however if being made permanent it may be more appropriately dealt with through licence conditions.
- 3.43 We also discuss the impact of any changes to the SoLR levy process in Section 5 below.

Note on SoLR Levy Offset and Customer Credit Balances (CCBs)

- 3.44 In order to protect customers, domestic customers' credit balances are protected through the SoLR process. SoLRs will indicate during the appointment process if it will claim for these costs under the SoLR levy or it may choose to absorb some or all of these costs.
- 3.45 Already, the cost of refunding CCBs can be claimed by the SoLR from a failed supplier and is a provable claim in its insolvency²⁴. Credit balances are a debt due to the customer that is owed by the failed supplier at the time of its failure. Having honoured the customer's debt, the SoLR can step into the shoes of the customer and submit a claim against the failed supplier (subrogation) and in its insolvency process. The SoLR's claim against the failed supplier is not dependent on the SoLR levy decision in the way we are proposing that networks' claims would be.
- 3.46 Given that the insolvency process can be lengthy, and it is not certain that a SoLR will be able to recover the full value of CCBs through the insolvency process, we do not expect SoLRs to await the outcome of the insolvency process prior to submitting an LRSP claim for CCBs. The SoLR is able to claim for the cost of refunding credit balances through the SoLR levy. However, if the SoLR later recovers any amount for CCBs from the insolvency process, it must return this amount to the networks, which will then ultimately pass this back to customers.

²³ [Decision on ending the temporary Last Resort Supply Payment process \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consult/condocs/so-lr/so-lr-levy/so-lr-levy-consultation-2023/so-lr-levy-consultation-2023-decision-on-ending-the-temporary-last-resort-supply-payment-process)

²⁴Following *Croxen & Others v GEMA & Others* [2022] EWHC 2826.

- 3.47 As CCBs can already be claimed by SoLRs in the administration process, to avoid the potential for SoLRs and the networks to duplicate claims, we are proposing that CCBs would not be included in the networks' creditor claim.
- 3.48 The proof of debt submitted to the insolvency office holder would not include any amount awarded for CCBs. Our published decisions make clear the amount consented to for each type of cost that SoLRs incur, so the amount excluding CCBs is readily available. We will consider whether further information should be provided to SoLRs and networks to make this clear.

4. Further details on deed and licence changes required

Section summary

To create a debt due from the failed supplier to the networks, we would need to modify the electricity and gas supply licences to include an obligation to enter into a deed of undertaking to the networks.

We have included a draft of the deed in Appendix 2.

Questions

Q6. What are your views on the deed as it is currently drafted?

Q7. What are your views on the proposed license changes for suppliers and networks? Please identify any factors relating to the drafting of license changes that we should consider at this stage.

4.1 As stated, for our preferred option to create a debt due from the failed supplier to the networks, we would need to modify supplier licences to include an obligation to enter into a deed of undertaking to the networks. The undertaking given will be to pay the networks an amount equal to the amount claimed from that network by the SoLR for customers of the failed supplier (excluding any part of the claim that relates to CCBs). We would provide a template deed for this purpose, which we would publish on our website.

The Deed

4.2 A draft copy of what we envisage the deed would look like can be found in Appendix 2. The key points are that:

1. The deed would contain an irrevocable unilateral undertaking from suppliers to the networks to pay the amount of any SoLR levy claim arising after a SoLR has been appointed to supply premises/persons that were supplied by the failed supplier.
2. There would be two deeds for each supplier that supplies both electricity and gas - one deed containing an undertaking from each supplier to the gas networks, and one from each supplier containing an undertaking to the electricity networks. For single fuel suppliers, the supplier would need to sign the relevant deed only.

3. All current licenced energy suppliers would be required to set up the relevant deed or deeds. All future suppliers would have to set up the deeds, or be required to enter into the deeds within a set timeframe, as part of entry into the market.
 4. The terms of the deed would survive the supplier entering into an insolvency process.
 5. The deed would only be executed by the supplier (not the networks) since it only creates obligations on suppliers.
- 4.3 We intend that the obligations created by the deed will survive the revocation of the supplier's licence. When a supplier fails, we revoke its licence. Upon revocation the failed supplier is no longer bound by the conditions of the licence. Therefore the obligation to pay SoLR Levy costs cannot be in the licence alone. The deeds signed for the SoLR Levy Offset would be a contractual arrangement that would endure beyond a supplier's failure and licence revocation. Therefore, this would allow networks to make a claim against the failed supplier and in the insolvency process of that supplier such that consumers have a chance of seeing the costs they have paid due to the supplier's failure offset by any recoveries.

Energy supply licence changes²⁵

- 4.4 For energy supply licences we would insert a condition in the licence making it a requirement to enter into the deed (or any updated version of the deed published on Ofgem's website). This will be a requirement for any company with a supply licence. We appreciate that this will take time to put in place and so would not anticipate taking compliance action within the first 20 working days after a supply licence is granted or after the new licence condition becomes effective (or a new version of the deed is published).
- 4.5 We will, at a future date, review arrangements to embed the multi-claim process into the supply licence but current arrangements (via a true-up deed) will continue in the meantime.

²⁵ Standard Conditions of licences can be found at <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>

Distributor/transporter license changes

- 4.6 We would look to amend the gas and electricity distribution licence conditions to support the arrangements, including the role of networks in taking reasonable steps (steps expected to be required described in paragraph 5.8, below) to recover sums due to them under the undertaking, and if successful, that these sums are then passed to consumers through reduced network charges.

5. Impact Assessment

Section summary

We consider that the policy could bring about important benefits to consumers, and that implementing it may have an impact on suppliers and networks. In this section, we explore these risks further. and we explore this impact further, as well as the potential impacts on networks and suppliers.

Questions

Q8. Have we identified the key impacts, risks and benefits of the SoLR Levy Offset, and are there any impacts we should give further consideration to? Do you think that overall this would be of benefit to consumers?

Impact on consumers

- 5.1 We consider that the SoLR Levy Offset would have a net positive impact on consumers as it presents an opportunity to reduce the cost impact on consumers of supplier failure. Since the start of the energy crisis in Autumn 2021, energy consumers have experienced increases in their bills of approximately £83, as a direct result of SoLR levy claims. Introduction of this policy means that networks could reclaim SoLR levy costs and then reduce their charges. This would ultimately feed through to consumers through reductions in energy bills. Based on information available from insolvency office holders' reports, we anticipate that unsecured creditors have, or will, receive a distribution in the majority of insolvency processes relating to suppliers that failed since Autumn 2021²⁶.
- 5.2 However, there exists, in any insolvency situation, the possibility that a creditor may receive very little or no financial outcomes. If the creditor claim does not receive a financial outcome, this would result in the full costs of the SoLR being mutualised across domestic energy consumers, with no future offset forthcoming. Therefore the benefits that will be achieved are uncertain. Noting that the amount that may be recovered is uncertain, our view is that introducing the SoLR Levy Offset provides the opportunity to recover some amount. It addresses the unfairness that currently exists within the system, as currently failed suppliers impose costs on industry parties and ultimately consumers where there is

²⁶ Information obtained from insolvency office holders' reports filed at Companies House.

currently no mechanism by which they can be required to contribute, even if there are funds available. Further, shareholders may receive a return on their equity in these circumstances, and we anticipate that this may be an outcome in a small number of the insolvency processes relating to suppliers that failed since Autumn 2021²⁷.

- 5.3 The insolvency process of an energy supplier can be complex and take a long time. While this does not present a risk to the policy it does mean that any intended benefit to energy consumers will not be realised until the administration and/or liquidation process is complete. Due to this timing, the consumers that receive any return through the SoLR Levy Offset may not be the same as those that initially paid for the SoLR levy claim, or consumers may not recover in the same proportions as they paid. Despite this, we still consider that compared to the current situation, there is consumer benefit to the SoLR Levy Offset even where there is a lengthy insolvency process. We also think that the SoLR Levy Offset addresses the current unfairness that exists within the system. Under the proposals, the networks will rank as an unsecured creditor, and so no distribution can be made to shareholders until this liability is discharged in full. Consequently, shareholders would not benefit from the failure of a supplier whereas the costs of failure are mutualised across the market and potentially ultimately paid for by consumers

Impact on consumers: public sector equality duty

- 5.4 As a public body, Ofgem is subject to the requirements of the public sector equality duty, as set out in section 149 of Equality Act 2010 (PSED). This means we must look for ways to eliminate discrimination, advance equality of opportunity and foster good relations between people who share protected characteristics, and those who do not. In our equality, diversity and inclusion strategy we state: "As the regulator of the energy sector, we recognise the real-life impact of the work that we do and the decisions we make." In developing this policy, we have due regard to the impact on vulnerable consumers.
- 5.5 If we implemented the SoLR Levy Offset, we consider that vulnerable consumers will in effect pay less to cover the costs associated with SoLR levy claims, due to the potential reduction in overall costs passed on to customers through network

²⁷ As above, information obtained from insolvency office holders' reports filed at Companies House.

charges. We will continue to explore the impact on consumers as this work develops.

Impact on networks

- 5.6 We recognise that the SoLR Levy Offset would necessitate action from the networks and place new requirements on them. However, we expect the time and cost of claiming the debt from the failed supplier and engaging in the failed supplier's insolvency process to be minimal and proportionate to the benefits of LRSP costs that will be offset by any recoveries achieved. The proposed modifications to the networks licence conditions will only require the networks to take reasonable steps to recover sums due.
- 5.7 There would be two primary areas where networks need to undertake new activity. Claiming the debt from the failed supplier and "proving" for the debt in the failed supplier's insolvency process; and applying money from the failed supplier to reduce network charges.
- 5.8 To claim or "prove" the debt in an insolvency process, networks would need to complete and sign a standard form (provided by the insolvency office holder to known creditors) including the capacity in which they are claiming, details of the amount claimed, particulars of the debt and details of any document under which the debt arises. We do not envisage that this will be a time-consuming or costly task for networks.
- 5.9 The insolvency office holder may call for the creditor to produce other evidence of their claim, which the networks would need to respond to. However, Ofgem's consent to the SoLR levy claim will evidence the amount of the debt and the deed itself will evidence the network's entitlement to it. The insolvency office holder may reject a proof of debt, and in this event, the creditor is able to challenge this decision by making a court application within 21 days of the decision. We have proposed a mechanism for creating a claim that is as simple and clear as possible so as to minimise this risk.
- 5.10 On balance, recognising that introducing this process would have an impact on the networks in that it would require their active engagement with the failed supplier and its insolvency process, we think that overall, the impact is not significant; it is likely to be a straightforward administrative process in the majority of cases. We welcome views on this.

- 5.11 The deed would contain no obligations on the networks, and so they would not need to sign it and would be a party to it for the purpose of receiving the benefit of it only. Therefore, the process of setting up the deeds should not require any burden for networks.
- 5.12 Until the point a SoLR levy claim is made, networks have little to do with the current SoLR levy claim process. We do not see any change in the role of networks here. We envisage that under the proposed model, the networks would pay SoLRs in line with the process that is currently followed; claims consented to by Ofgem and made by an agreed date each year would mean that payments commence in April of the following year. We would also expect that networks start recovering the costs of the claims (through network charges, which are ultimately passed on to customers) in line with the current process. To clarify; this model does not require networks to wait until the insolvency process of the failed supplier is complete before starting to recover the amounts consented to through use of system charges. This does mean that any amount recovered from the insolvency process would need to be deducted from use of system charges at the next point annual charges are set following receipt of any amount from the failed supplier.

Impact of the SoLR Levy Offset on timing of SoLR levy claims

- 5.13 As set out in section 3 above, there is an interaction between the timings of SoLR levy claims and the SoLR Levy Offset process. If we were to implement the SoLR Levy Offset process we envisage that we may need to direct SoLRs to submit an initial claim within a set period of time, and that we would need to make the multi-claim process permanent. We may introduce changes to supplier licences to include the multi claim process.
- 5.14 We understand that any change to the timeframes and process for SoLR levy claims will have an administrative impact on SoLRs. It may also have an impact on the resources we require to process these claims, given that we may need to make decisions more quickly once a SoLR levy claim is received.

Impact on suppliers

- 5.15 We also recognise that there may be impacts on suppliers more broadly (which would relate to all suppliers, including those that are not acting as SoLRs):
- There would be an administrative burden involved in setting up the deeds. However, we expect that this this would be a one-off activity (though, if we

find that the deed does not achieve the intended outcome for any reason, we may need to mandate an amended version): all existing suppliers would need to sign the deed, and new entrants to the market would need to sign the deed prior to or shortly after being licensed. To minimise this burden, we will provide a standard form and instructions for sending the deed to the networks such that this should be an administrative exercise for suppliers. The proposed ranking of networks as unsecured creditors is based on our intent not to disrupt secure credit which could impact the associated cost of capital. Therefore, we are not proposing that the debt should be secured. We do not think that an unsecured creditor claim would have a significant impact on secured creditors, but welcome views on this point.

- We have considered whether 'gaming risks' exist. Whilst in theory the debt to the networks being unsecured credit could lead to equity holders trying to game the financing structures (for example choosing to swap equity for debt as a supplier approaches insolvency), in practice the measures that we have recently put in place such as supplier capital targets, which introduces common minimum capital requirements for domestic suppliers, should make it more unlikely, and such arrangement may also be potentially challengeable by insolvency office holders.

Monitoring/resource requirement

5.16 Ofgem staff resource will be required for implementation, and there may be some future need for monitoring of compliance with the deed, monitoring of insolvency procedures where a SoLR has been appointed and similar administrative tasks. However, we do not think that this is a significant additional resource burden above the resources already required within Ofgem to appoint SoLRs and assess SoLR levy claims.

Environmental impact

5.17 We have not identified any environmental impact of these proposals.

Appendices

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Appendix 1 – Summary of responses to Strengthening Financial Resilience consultation

| | Option 1 – Licence Change | Option 2 – Contractual Change |
|----------------|--|---|
| Positive Views | <ul style="list-style-type: none"> • Provide customer with greatest certainty over hedge values. • More effective at delivering Ofgem’s objectives. | <ul style="list-style-type: none"> • More achievable than option 1 • May cause little disruption to suppliers. |
| Negative Views | <ul style="list-style-type: none"> • Unworkable and unmindful of the insolvency law • Negative impact on hedging strategies and their variability • Over simplistic assumption on how hedging works • Overly complex and costly • Uncertainty related to the definition of ‘in-the-money’ hedges • Negative impact on trading partner and counter party agreements • Negative impact on credit ratings and cost of debt • Could be undermined via rule breaking insolvency practitioners. • Does not address the risk related to market gambling • More suitable as legislative reform | <ul style="list-style-type: none"> • Dilution of hedge value, by competing creditor claims • Practical implementation issues and uncertainty whether insolvency practitioners will accept the unsecured creditor claim • More suitable as legislative reform • Unworkable, negative impact on hedging strategies and their variability as it may reduce investor appetite if shareholders are less likely to get access to residual value of the hedge. |

Appendix 2 – Draft deed of undertaking

DEED OF UNDERTAKING TO GAS TRANSPORTERS/ELECTRICITY DISTRIBUTORS *[two separate deeds required for gas/electricity supply]*

Executed for the purpose of Standard Licence Condition [] of the [Gas/Electricity] Supply Licence.

This DEED OF UNDERTAKING is entered into on.....

By [] (the “**Supplier**”) a company registered in England and Wales/Scotland under company registration number [] and whose registered office is at []

In favour of each of:

(1) []

(2) []

(3) []

(each a [“**Gas Transporter**”/“**Electricity Distributor**”] and together the [“**Gas Transporters**”/“**Electricity Distributors**”]))

WHEREAS

Pursuant to standard licence condition [] of the [gas/electricity] supply licence the Supplier is required to give the [Gas Transporters/Electricity Distributors] a binding undertaking in the specified terms.

NOW THIS DEED WITNESSES as follows:

1. Interpretation

1.1. For the purposes of this Deed:

Authority means the Gas and Electricity Markets Authority

Customer Credit Balances has the meaning in SLC 9 (claims for last resort supply payment).

Condition means the giving of a Last Resort Supply Direction.

Insolvency Process means the Supplier entering into administration under schedule B1 of the Insolvency Act 1986 or being wound up (whether voluntarily or by order of the court), having a receiver appointed over any of its assets (including administrative receiver), a company voluntary arrangement under Part 1 of the Insolvency Act 1986, a restructuring plan or scheme of arrangement under Parts 26 and 26A of the Companies Act 2006 or entering into a procedure in any jurisdiction with a similar effect to any of these processes.

Last Resort Supply Direction means a direction given by the Authority that specifies or describes the premises or persons to be supplied with [gas/electricity] in accordance with SLC 8 (obligations under last resort supply direction) where

such premises or persons were, prior to such direction taking effect, supplied with [gas/electricity] by the Supplier.

Last Resort Supply Payment Liability means the aggregate amount of any Valid Claims made by a SoLR excluding the cost incurred by the SoLR in honouring Customer Credit Balances.

SLC means standard licence condition of the Supply Licence and incorporated in the Supply Licence by reference in it and “**SLCs**” shall be construed accordingly.

SoLR means the holder of a Supply Licence to whom a Last Resort Supply Direction has been given.

Supply Licence means a licence granted by the Authority pursuant to [section 7A(1) of the Gas Act 1986/section 6(1)(d) of the Electricity Act 1989] to a person authorising it to supply [gas/electricity] to premises.

Valid Claim(s) has the meaning in SLC 9 (claims for last resort supply payment).

- 1.2. Unless the context otherwise requires
 - 1.2.1. any reference to SLCs is a reference to that SLC as modified, supplemented, transferred or replaced from time to time.
 - 1.2.2. any reference to any document is to be construed as a reference to that document as it may have been or may in the future be amended, varied, supplemented, restated or novated.
 - 1.2.3. any reference to any statute or statutory instrument includes any enactment replacing or amending it or any instrument, order or regulation made under it and also includes any past statutory provisions (as from time to time modified or re-enacted) which such provision has directly or indirectly replaced.
 - 1.2.4. clause headings are for reference only and shall not be taken into consideration in interpretation.

2. Undertaking

- 2.1. The Supplier undertakes to each [Gas Transporter/Electricity Distributor] that, upon the occurrence of the Condition, the Supplier will pay to the [Gas Transporter/Electricity Distributor] the amount of any Last Resort Supply Payment Liability.
 - 2.2. This Deed will continue in force notwithstanding any Insolvency Process.
 - 2.3. Subject to paragraph 2.5, the undertaking in paragraph 2.1 is irrevocable until and unless the supplier gives each of the [Gas Transporters/Electricity Distributors] a replacement binding undertaking in compliance with any requirement under SLC [].
 - 2.4. Subject to paragraphs 2.3 and 2.5, the undertaking in paragraph 2.1 is irrevocable both before and after the occurrence of any Insolvency Process in relation to the Supplier.
 - 2.5. If the Supplier ceases to hold a Supply Licence in circumstances where a Last Resort Supply Direction is not made as consequence of such cessation, the undertaking will cease to have effect.
 - 2.6. All sums payable by the Supplier under this Deed shall be paid free and clear of any deductions, withholdings, set-offs or counterclaims.
-

3. Miscellaneous

- 3.1. The Supplier shall be liable under this Deed as a sole principal debtor and not as surety, and it shall not be discharged and its liability shall not be affected by anything which would discharge it or affect its liability as surety.
- 3.2. This Deed is in addition to any security or surety in favour of a [Gas Transporter/Electricity Distributor] and may be enforced without first having recourse under any such security or surety.
- 3.3. No failure or delay by a [Gas Transporter/Electricity Distributor] in exercising any right, power or remedy in connection with this Deed will operate as a waiver of it, and no single or partial exercise of it will preclude any other or further exercise of it or the exercise of any other such right, power or remedy.
- 3.4. The right, powers and remedies provided in this Deed are cumulative and not exclusive of any other rights, powers or remedies.
- 3.5. No waiver, compounding or compromise of any liability of, or time or indulgence given to the Supplier by a [Gas Transporter/Electricity Distributor] (in its absolute discretion) shall prejudice or affect a [Gas Transporter's/Electricity Distributor's] rights against the Supplier.
- 3.6. Except as otherwise provided herein this Deed contains the whole agreement between the parties relating to the subject matter of this Deed at the date hereof to the exclusion of any terms implied by law which may be excluded by contract.
- 3.7. No variation of this Deed shall be effective unless in writing and signed by or on behalf of each of the parties and agreed in advance by the Authority in writing.
- 3.8. Subject to paragraph 3.9, this Deed is personal to the parties and the rights and obligations of the parties may not be assigned or otherwise transferred.
- 3.9. A [Gas Transporter/Electricity Distributor] may assign its rights under this Deed to another [gas transporter/electricity distributor] with the agreement in writing of the Authority.]
- 3.10. The Deed shall be governed by and construed in accordance with English law; and courts of England are to have exclusive jurisdiction in relation to any dispute arising out of or in connection with this Deed.

[Execution Block

EXECUTED AS A DEED.....]

Appendix 3 – Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

None.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for six months after the project is closed.

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services

- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".