

# Consultation on minor changes to Renewables Obligation and Customer Credit Balance ringfencing guidance and templates

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Following on from the first round of Renewables Obligation (RO) ringfencing, we are consulting on making minor changes to the RO Credit Cover Mechanism templates and accompanying supplier guidance to add clarity and ease operationalisation. Where changes to the RO Credit Cover Mechanism templates need to be mirrored in the templates used for Customer Credit Balance (CCB) ringfencing and where we have identified other minor changes that will add clarity and ease operationalisation of CCB ringfencing, we intend changing the relevant templates in parallel.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. We welcome views from all interested stakeholders.

## Consultation

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### Executive Summary

In April 2023, we published our [Decision on Strengthening Financial Resilience](#). Part of this decision was to proceed with requiring suppliers to ringfence Renewables Obligation (RO) receipts attributable to domestic supply for the 2023/24 RO scheme year onwards. We required suppliers to provide evidence of having ringfenced their RO receipts for Quarters 1 and 2 of the 2023/24 scheme year in Quarter 3 of the scheme year (November 2023) and each quarter thereafter.

Ringfencing has now been successfully introduced and through our engagement with suppliers we have received useful feedback during the first ringfencing rounds. This has included identifying minor operational changes to both the RO Credit Cover Mechanism templates and accompanying supplier guidance that will help smooth the regular data and credit cover submission process. We have also identified minor changes which we believe will help further enhance operational arrangements.

Some of the changes are also relevant to the Credit Balance Support Arrangement templates used for Customer Credit Balance (CCB) ringfencing. We have also identified some other minor changes that will add clarity and ease operationalisation of the CCB ringfencing arrangements.

It also highlights our intention to make minor changes to Standard Licence Condition (SLC) 30 which relate to our proposed changes to the supplier guidance supporting the RO ringfencing requirements via an erratum notice as well as SLC 4B and SLC 4D to correct errors in current drafting.

### Proposed changes

We propose to make the following changes:

- **Proposed amendments to the [Ringfencing the Renewables Obligation Guidance](#)** – to provide greater clarity on what is included as part of domestic supply volumes and clarifying arrangements where an element of estimation is required in submitting supply volumes.
- **Proposed RO Credit Cover Mechanism template amendments** – minor changes to either provide additional clarity or improve the readability of the templates.
- **Proposed Credit Balance Support Arrangement template amendments** – mirroring relevant changes to the RO Credit Cover Mechanism Templates and providing additional clarity or improvements to the readability of the templates.

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- **Proposed amendments to the [Guidance on the Operational Capability and Financial Responsibility Principles](#)** – to provide further clarity on the calculation of the Protected Amount.

All proposed changes can also be seen in the documents attached to this consultation.

## Planned Erratum Notice

We also plan to make minor amendments to SLC 30, SLC 4B and SLC 4D via an erratum notice that we will publish in due course alongside any decision we may make following this consultation. These amendments will correct errors in the current drafting.

## Next Steps

We are consulting on our proposed changes for four weeks. The consultation closes at 5pm on 7 June 2024, and responses should be submitted in writing to [RetailFinancialResilience@ofgem.gov.uk](mailto:RetailFinancialResilience@ofgem.gov.uk).

We propose that these changes take effect immediately upon publication of our decision (expected in summer 2024).

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### Related Publications

[Decision on Strengthening Financial Resilience \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consultation-summaries/decision-on-strengthening-financial-resilience)

[Ringfencing the Renewables Obligations Guidance and Schedule](https://www.ofgem.gov.uk/consultation-summaries/ringfencing-the-renewables-obligations-guidance-and-schedule)

[Strengthening Financial Resilience- Minimum Capital Requirement and Ringfencing CCBs by Direction \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consultation-summaries/strengthening-financial-resilience-minimum-capital-requirement-and-ringfencing-ccb-by-direction)

### Consultation stages

<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Stage 4</b>
Consultation open	Consultation closes (awaiting decision).	Responses reviewed and published	Consultation decision
9 May 2024	7 June 2024	Summer 2024	Summer 2024

### How to respond

We want to hear from anyone interested in this consultation. Please send your response to the team named on this document's front page.

We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations).

### Your response, data and confidentiality

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.

If you wish us to keep parts 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.

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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 in the appendices to this document.

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.

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### General feedback

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:

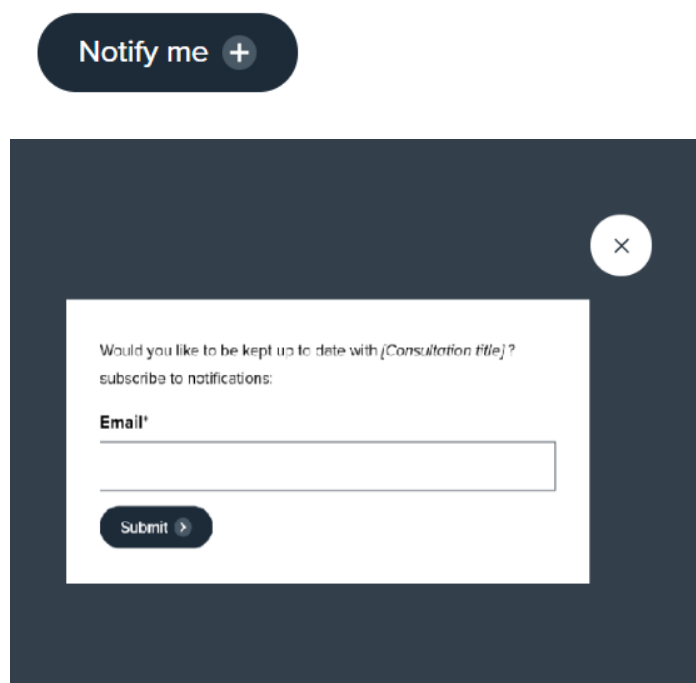
1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6.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

Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto: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)



The image shows a dark blue button with the text "Notify me" and a plus sign. Below it is a dark blue modal window with a white background. The modal contains the text "Would you like to be kept up to date with [Consultation title]?" followed by "subscribe to notifications:". There is an "Email" label and a text input field. At the bottom of the modal is a "Submit" button with a right-pointing arrow. A close button (an 'x' in a circle) is in the top right corner of the modal.

Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

**Upcoming** > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)



# Proposed Changes

### Section summary

In this section we set out the proposed changes to the RO Credit Cover Mechanism templates, Credit Balance Support Arrangement templates, Guidance on the Operational Capability and Financial Responsibility Principles and the Ringfencing the Renewables Obligation supplier guidance and explain why we think these changes are required. We also seek feedback on the proposed changes and whether there are any further changes that we should be considering. Marked up versions of the templates and guidance have been published alongside this document.

## Ringfencing the Renewables Obligation Guidance Changes

### Additional clarification on the definition of Domestic Customer

- 1.1 When submitting volumetric data to Ofgem, some licensees have questioned how consumers supplied under Multi-Site Contracts<sup>1</sup> should be treated for the purposes of RO ringfencing. SLC 6 guides licensees on this point stating that Domestic Premises supplied under Multi-Site Contracts should be treated as a Non-Domestic Premises and sets out the circumstances in which Multi-site Contracts exist.
- 1.2 We therefore propose adding the following text to the supplier guidance to add clarity:

*"For 'dual' supply (domestic & non-domestic) licensees with ringfencing obligations under the Renewables Obligation (RO), please refer to SLC 6 in the Electricity Supply Licence Conditions. ('Classification of Premises'). SLC 6.6 sets out the requirement for Domestic Premises supplied under Multi-Site Contracts to be treated as a Non-Domestic Premises. SLC 6.5 sets out the circumstances in which Multi-Site Contracts will exist. In accordance with SLC 6.6 and SLC 6.5, supply volumes relating to multi-site contracts are therefore required to be*

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<sup>1</sup> A multisite contract is defined as a contract for the supply of electricity to: (a) one or more Non-Domestic Premises; and (b) one or more Domestic Premises which are occupied for a purpose ancillary to that for which any of the Non-Domestic Premises is occupied, where all of those premises are owned or occupied by: (i) the same person or body of persons whether corporate or unincorporate; or (ii) an Undertaking (for this condition only, the "principal undertaking") and a Holding Company, Subsidiary or Subsidiary of the Holding Company of that principal undertaking or any other Undertaking in which the principal undertaking has a Participating Interest.

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*treated as non-domestic supply and are outside the scope of SLC 30 and RO ringfencing requirements.”*

- 1.3 Alongside the proposed additional text, to aid readability, we plan to move the explanation on how domestic supply volumes should be derived to Section 2 of the guidance – Calculating the Quarterly Cumulative Obligation.

### **Amendments to calculated Quarterly Cumulative Obligations (QCOs)**

- 1.4 Each quarter, Ofgem calculates the number of Renewable Obligation Certificates a supplier must hold in respect of relevant electricity supplied to Domestic Customers for both the current quarter and preceding quarters that have yet to be discharged (its Quarterly Cumulative Obligation, QCO).
- 1.5 We have received requests from some licensees to amend their QCO as a result of having more accurate data available post originally submitting data used to calculate their QCO.
- 1.6 The QCO is calculated using Relevant Domestic Electricity Supplied ('RDES') figures. These figures are based on the domestic supply volumes submitted by obligated suppliers on a quarterly basis for FIT levelisation<sup>2</sup>.
- 1.7 While Ofgem acknowledges that there is often an element of estimation in the quarterly supply volumes submitted for FIT Quarterly levelisation, there is no legislative pathway in place whereby suppliers can submit revised quarterly supply volumes (which are also used for RDES ringfencing calculations) based on more 'up to date' third party validation data. In order to meet the quarterly ringfencing schedule, Ofgem retains the same timelines as the FIT levelisation schedule as this streamlines the process for both Ofgem and suppliers.
- 1.8 The policy intent is that suppliers are able to meet their RO obligation on an annual basis. We wish to highlight that the quantity of ROCs / buyout payments required by suppliers in relation to their obligations are ultimately reconciled on an annual basis. These will be based on fully settled data / supply volumes for both domestic and non-domestic supply. We will include drafting to this effect in the Ringfencing the Renewables Obligation supplier guidance.

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<sup>2</sup>[FIT Quarterly levelisation](#) is the mechanism by which the total cost of the FIT Scheme is apportioned across licensed electricity suppliers. The cost is allocated between suppliers in proportion to their share of the electricity supply market of Great Britain, whilst taking into account any FIT contribution they have already made. Submission of levelisation data is made to Ofgem via the Central FIT Register.

### Questions

- Q1 Do you agree with the proposed changes to the supplier guidance?
- Q2 Do you have any comments with regards to the proposed changes to the supplier guidance?
- Q3 Are there any other operational changes that should be made to the supplier guidance? If so, what are they and why should they be made?

## RO Credit Cover Mechanism Template Changes

### Declaration of Trust: Terms

- 1.9 The terms of the Declaration of Trust currently do not explicitly state that a licensee may withdraw funds from the trust account for the purpose of settling the annual RO Discharge Payment.
- 1.10 To make this explicit, we propose to amend clause 2.3, primarily by adding clause 2.3(D), to allow funds to be transferred from the trust account straight to Ofgem:

*"The Licensee may withdraw amounts standing to the credit of the Trust Account by paying such amounts ~~to a different bank account of the Licensee:~~*

- (A) *to a different bank account of the Licensee to the extent that such amounts (together with the then Maximum Amount under any Standby Letter of Credit or First Demand Guarantee issued to Protect the then applicable RO Credit Cover Amount) exceed the then applicable RO Credit Cover Amount; or*
- (B) *in accordance with directions by, or consent of, the Authority; or*
- (C) *to a different bank account of the Licensee if the Authority determines that the Trust Property no longer need be held on trust by the Trustee on the terms of this Declaration of Trust; or*
- (D) *to the Authority in order to pay any RO Discharge Payment payable by the Licensee, provided that the remaining credit balance of the Trust Account shall continue to be at least equal to the RO Credit Cover Amount immediately following the payment of such RO Discharge Payment*

*and, following the transfer of any such amounts to a different bank account ~~of the Licensee,~~ such amounts shall cease to be Trust Property."*

### Declaration of Trust: Clause 3.5 - No transfer or disposal

- 1.11 Clause 3.5 limits the instances where a trustee may transfer or dispose of funds from the trust account. The clause already references clause 2.3 which sets out the situations where the licensee may withdraw amounts from the trust account. However, following a review of the template, we believe it should also reference clause 2.4 which lists the situations where payments from the account should be made to Ofgem or at its direction.
- 1.12 We therefore propose amending clause 3.5 as follows:

***"No transfer or disposal***

*The Trustee hereby agrees that it shall not, at any time, hold itself out to any person as being beneficially entitled to the Trust Account or the amounts standing to the credit of the Trust Account, and shall only be entitled to effect any transfer or disposal of any of its right, title, interest and benefit in the Trust Property or the amounts standing to the credit of the Trust Account comprising the Trust Property in accordance with clause 2.3 or clause 2.4 above."*

### First Demand Guarantee: Guarantor details

- 1.13 Following a review of the template, we propose making the registered address and company number of the Guarantor clearer. We believe this will reduce errors with clause 6a (where the licensee provides details of the Guarantor including address and email which may be different to the registered address).
- 1.14 We propose amending the first paragraph of the template to:

*"At the request of [insert full legal name of the Licensee] (the "Licensee"), and in order that the Licensee may be granted, retain or comply with its License on favourable terms, we, [insert full legal name of Guarantor, registered address and company number], (the "Guarantor") issue this irrevocable and unconditional First Demand Guarantee (this "First Demand Guarantee") in your favour as its Beneficiary."*

### First Demand Guarantee and Standby Letter of Credit: Expiry Date

- 1.15 The First Demand Guarantee and Standby Letter of Credit both currently specify that the expiry date should be 18-months from the day of issue. The 18-month time period, however, may not be appropriate in every situation. For example, where a First Demand Guarantee commences more than 18-months before the

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late payment period for the relevant RO scheme year, the mechanism could expire before Ofgem might need to draw upon the credit cover.

1.16 We propose, therefore, to amend the definition in both templates to:

*“**Expiry Date**” means 5pm London time on [insert the date which falls one month after the end of the relevant late payment period<sup>1</sup>]”*

Footnote 1: “[RO Guidance – 4.21 to 4.24 - Late payment period](#)”

## Other minor amendments to improve the readability of the templates

1.17 Following a review of the templates we have identified several amendments which will aid the readability of the templates and reduce the likelihood of future errors.

The proposed changes are:

- **Standby Letter of Credit: Clause 6 “ISP 98/UCP 600”** – minor changes to the layout and footnote drafting to:

### **“ISP 98/UCP 600**

*Except to the extent that it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the [International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590 (“ISP 98”)] / [the Uniform Customs and Practice for Documentary Credits (UCP), 2007 Revision, ICC Publication No. 600 (“UCP 600”), but excluding Article 32 of UCP 600].<sup>6</sup>”*

Footnote 6: “*Select ISP 98 unless the Issuer, or the Issuer and any confirming bank, prefers UCP 600, or it is otherwise difficult or impossible to use ISP 98. [delete option as appropriate]*”

- **Declaration of Trust: Definitions** – adding a definition for ‘Trust Property’:

*“**Trust Property**” has the meaning set out in Clause 2.1”*

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- **Declaration of Trust: Schedule 1** – amending the reference to the beneficiary in paragraph 2 by replacing ‘The Office of Gas and Electricity Markets’ with ‘The Gas and Electricity Markets Authority’:

*"We hereby give you notice that by an account declaration of trust dated on or about the date hereof we have declared a trust over all amounts credited to the Trust Account from time to time in favour of ~~The Office of Gas and Electricity Markets~~ The Gas and Electricity Markets Authority in its capacity as beneficiary."*

- **First Demand Guarantee: Clause 8 "Jurisdiction and service of process"** – re-order some of the clauses to improve the flow of the document. In addition, removing the requirement to delete paragraphs if the Guarantor is incorporated in England and Wales, instead including a statement at the start of clause 8 to make it clear when the clauses apply:

*"Paragraphs 8(b) to 8(f) only apply if the Guarantor is not incorporated in England and Wales or has a place of business outside of England and Wales."*

- **Standby Letter of Credit, Declaration of Trust and First Demand Guarantee: Definitions** – capitalise the reference to the RO in the definition for a ‘Non-Payment Event’

## Questions

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|----|---|
| Q4 | Do you agree with the proposed changes to the templates?  |
| Q5 | Do you have any comments with regards to the proposed changes to the templates?                               |
| Q6 | Are there any other operational changes that should be made. If so what are they and why should they be made? |

### Credit Balance Support Arrangement Template and Guidance on the Operational Capability and Financial Responsibility Principles Changes

- 1.18 We propose mirroring the following proposed changes for the RO Credit Cover Mechanism Templates in the Credit Balance Support Arrangement templates:
- Standby Letter of Credit: Clause 6 "ISP 98/UCP 600"
  - Declaration of Trust: Definitions
  - Declaration of Trust: Clause 3.5 - No transfer or disposal (adding a reference to clauses 2.4 and 2.5)
  - First Demand Guarantee: Guarantor details
  - First Demand Guarantee: Clause 9 "Jurisdiction and service of process"

#### Declaration of Trust: Clause 2.3

- 1.19 We propose to amend clause 2.3 "The Trust" in the Declaration of Trust template to allow funds to be sent to a third party. This may be necessary in circumstances where Ofgem requires the funds to be sent to a specific party, or to refund credit balances to consumers.

*"by paying such amounts to a different bank account ~~of the Licensee~~ (and, following the transfer of any such amounts to a different bank account ~~of the Licensee~~, such amounts shall cease to be Trust Property)."*

#### Declaration of Trust: Schedule 1

- 1.20 We propose to remove the reference to 'The Office of Gas and Electricity Markets (the **Authority**)' in paragraph 2 and replace it with 'The Gas and Electricity Markets Authority'.

*"We hereby give you notice that by a declaration of trust dated on or about the date hereof we have declared a trust over all amounts credited to the Trust Account from time to time in favour of ourselves and any Supplier(s) of Last Resort nominated from time to time by ~~The Office of Gas and Electricity Markets (the Authority)~~ The Gas and Electricity Markets Authority in relation to our Fixed Direct Debit Domestic Customers or, prior to the appointment of any such Supplier of Last Resort(s), our Fixed Direct Debit Domestic Customers as a whole."*

### Standby Letter of Credit: Definitions

- 1.21 We also propose to correct an error in the definition for ISP 98 in the Standby Letter of Credit. Rather than reference paragraph 7, the definition should refer to paragraph 6:

*["**ISP 98**" is defined in paragraph 6 below<sup>3</sup>;]*

Footnote 4: *Remove the square brackets and delete the option which does not apply.*

- 1.22 Marked up versions of the templates have been published alongside this document.

### Guidance on the Operational Capability and Financial Responsibility

#### Principles: Protected Amount

- 1.23 In order to provide additional clarity on the calculation of the Protected Amount we have amended paragraph 4.12 of the guidance and provided a calculation example.

*"The licensee will calculate the Protected Amount in accordance with SLC 4D.4 based on ~~Domestic Customer~~ Gross Credit Balances minus Unbilled Consumption multiplied by the Adjustment Percentage. The balances of other customer groups including pre-payment customers, those paying on demand, by variable Direct Debit, or by other methods are not required to be included in the calculation. The Protected Amount is calculated as follows:*

*At close of business on the day the calculation is required (for the Initial Period or the Relevant Period, see SLC 4D.5 and paragraph 4.14 below), the licensee will calculate the Gross Credit Balance net of Unbilled Consumption they hold (meaning they will calculate the aggregate amount by which payments made by Fixed Direct Debit Customers under or in accordance with the relevant Domestic Supply Contracts exceeds the total amount of Charges which are to become payable by Fixed Direct Debit Customers under those Domestic Supply Contracts minus any amount refunded to the Domestic Customer during that period). This*

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<sup>3</sup> Delete if this Letter of Credit will be governed by UCP 600.



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balance will be multiplied by the Adjustment Percentage. An example of the calculation is as follows:

Gross Credit Balances held by the licensee at close of business on the day of calculation (after any refunds have been returned to customers) = £10,000,000  
Unbilled Consumption at close of business on the day of calculation = £2,000,000  
Adjustment percentage = 75%

£10,000,000 - £2,000,000 = £8,000,000

£8,000,000 x 75% = £6,000,000

The licensee must Protect £6,000,000 using one or more of the Credit Balance Support Arrangements for the entirety of the Initial Period or the Relevant Period, whichever period the calculation relates to."

## Questions

- Q7 Do you agree with the proposed changes to the templates and Guidance?
- Q8 Do you have any comments with regards to the proposed changes to the templates and guidance?
- Q9 Should any of the other proposed RO Credit Cover Mechanism Templates changes be mirrored in these templates?

## Appendices

### Appendix 1 – Privacy notice

#### 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](mailto: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**

Your personal information is never shared with anyone outside of Ofgem. However, we will publish your response to our consultation on our website. If your response includes personal information, we will publish your response as is, unless you tell us you wish to have any names on the document redacted.

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

We intend holding your personal data for 12 months.

#### **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:

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- 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 3<sup>rd</sup> parties.
- tell us your preferred frequency, content, and format of our communications with you.
- 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](#)".