

# Consultation

<b>Supplier Licensing Review</b>			
<b>Publication date:</b>	21 November 2018	<b>Contact:</b>	Lisa Charlesworth or Jeremy Adams-Strump
		<b>Team:</b>	Industry Codes & Licensing
<b>Response deadline:</b>	23 January 2019	<b>Tel:</b>	020 7901 7164 / 3263 9954
		<b>Email:</b>	licensing@ofgem.gov.uk

We are reviewing our approach to licensing suppliers, to raise standards around financial resilience and customer service.

This consultation sets out proposals to strengthen the criteria we use to assess supply licence applications, and amend the process for applying for a licence. We intend to increase ongoing scrutiny and oversight of those already operating in the retail energy markets, and are seeking views on options for achieving this. We also intend to strengthen our arrangements for dealing with supplier exit, to ensure that the failing supplier bears their share of the costs and minimise the implications for remaining suppliers and consumers.

We would like views from suppliers and people with an interest in entering the gas or electricity supply market, consumer groups, trade bodies, 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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**Appendix 1: Draft information requirements for supply licence applications**

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## Executive summary

### Overview

#### Scope and purpose

We are reviewing our approach to licensing and regulating suppliers to raise standards around financial resilience and customer service. This is an important step in enabling a better functioning retail market.

We intend to introduce a package of reforms. The scope of the review will encompass Ofgem's:

- conditions for suppliers entering the market;
- ongoing requirements, monitoring and engagement; and,
- arrangements for managing supplier failure and market exit.

This first consultation outlines our initial proposals for new licence application criteria. We also set out options for ongoing requirements, for discussion. Future papers will present detailed proposals around ongoing requirements and exit arrangements, for consultation.

#### Context and aims

Competition in the retail energy markets has increased significantly in the last half decade. The market share of the six largest suppliers has steadily decreased and now almost a quarter of customers get their energy from small and medium suppliers. This has brought benefits to consumers through increased price competition and pressure on incumbent suppliers to improve their customer service offering. However, we have also seen an increase in supplier failures and inadequate customer service provision in certain cases. Financial difficulty and poor customer service are often interrelated.

Our current arrangements successfully protect consumers when a supplier fails. Nonetheless, failure is disruptive and can impose costs on competitors. Furthermore, frequent failures risk undermining consumers' confidence in the market and motivation to switch to a better energy deal. We want to strengthen our licensing and regulatory regime to drive up standards in the sector and minimise competitors' and consumers' exposure to financial risks and poor customer service.

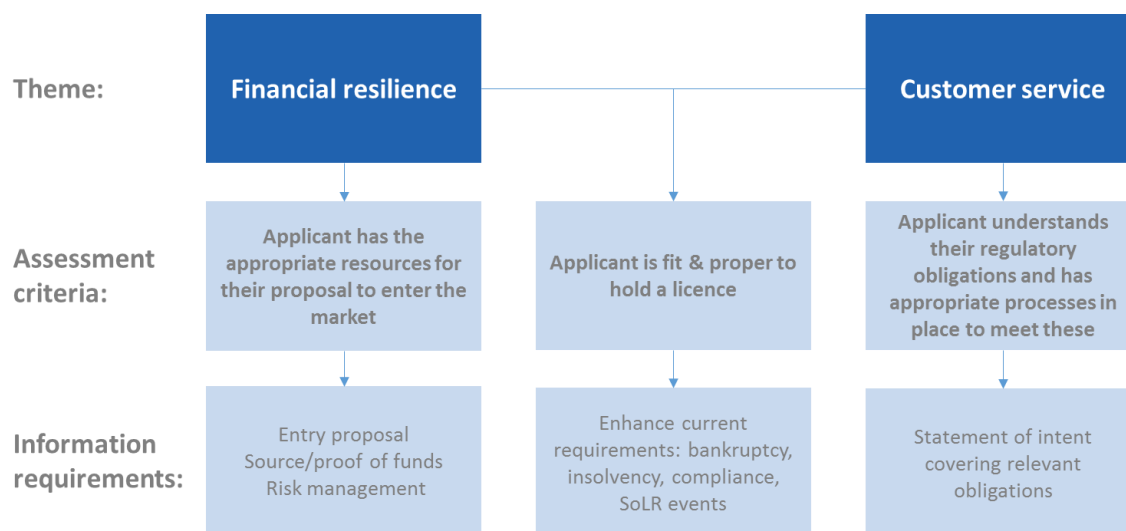
Our licensing and regulatory regime needs to be effective and proportionate in protecting consumers, while facilitating competition and innovation. At this stage in the transition to a low carbon energy system it is more important than ever that firms with innovative business models, products and services can enter the market in a way that delivers benefits for consumers. That said, energy is an essential service; there are minimum standards that suppliers must meet and any company entering the market needs to be well-prepared. We are therefore consulting on proposals to increase scrutiny of potential new entrants to ensure they are adequately prepared, resourced and that they are fit to operate in the energy supply markets. Entrants must adopt a robust approach to risk management, and be adequately resourced to maintain appropriate customer service standards.

Even so, in a competitive market we would expect some suppliers to fail; we want to ensure that if this happens, their customers are protected and wider market impacts are minimised. Alongside this we are therefore considering new ongoing requirements on all active suppliers, and provisions to better manage potential supplier exit, to mitigate against the risks and impacts of potential supplier failure.

## Entry criteria: initial proposals

We propose to introduce three assessment criteria for supply licence applications, with associated information requirements.

**Figure 1: Proposed new supply licence application requirements**



Our view is that increasing the scope of information required in these key areas, and enhancing our scrutiny of potential entrants, will provide the right balance between increasing consumer protection and continuing to enable innovation and competition. We welcome views on this.

We consider that an applicant should be able to demonstrate that they plan to enter the market with – amongst other things – an understanding of the costs and risks involved, adequate operational and financial resources to manage these, and a plan to comply with their customer-service related obligations. Our qualitative assessment of the information provided would both strengthen the licence application process, and facilitate more effective risk-based monitoring and ongoing engagement post-licensing.

We are also proposing to licence suppliers closer to their planned market entry. This will mean that potential new entrants have better information available to demonstrate how they meet the new assessment criteria.

## Ongoing requirements

Our licence application process is a 'point in time' assessment and cannot provide ongoing assurance of future conduct or financial resilience. We therefore propose to introduce new requirements on all suppliers to improve our ongoing oversight and promote higher financial and risk management standards.

We are seeking initial views on options for new ongoing licence requirements. These options include, amongst other things: a requirement for active suppliers to report annually on their financial and operational adequacy, to increase ongoing focus on their resilience (including in relation to their key customer service obligations and Government schemes); and an ongoing

'fit and proper' requirement. Following this initial discussion, we expect to bring forward proposals for consultation early next year.

## **Managing exit**

In a separate consultation we will consider the issue of supplier exit. Exit is a feature of any well-functioning competitive market. However, as energy is an essential service, it is important that consumers are protected when a supplier exits the market, and that any implications and costs for remaining suppliers are minimised. We will consider a range of options to limit remaining suppliers' exposure to the costs of failures, including new rules or restrictions on how suppliers accrue, hold and use customer credit balances. In the event a supplier does fail, Ofgem's 'safety net' provision protects customers' credit balances and ensures their energy supply continues.

We also expect to review our Supplier of Last Resort process and revocation conditions.

## 1. Introduction

### What are we consulting on?

1.1. One of our key priorities is to enable a better functioning retail energy market.<sup>1</sup> We have decided to review our approach to licensing and regulating suppliers, to raise standards around financial resilience and customer service.

1.2. The scope and objectives<sup>2</sup> of this review encompass three areas:

1. **Conditions for entering the market** – we are strengthening our approach to granting a licence to increase confidence that new suppliers can meet expected customer service standards. We are also proposing additional requirements relating to the financial health of a prospective supplier. Our objective is to apply appropriate scrutiny and oversight of suppliers entering and operating in the market, while facilitating competition and innovation.
2. **Ongoing requirements, monitoring and engagement** – we intend to introduce additional ongoing requirements during a supplier’s operation in the market to give assurance in respect of their financial resilience and ensure we are better prepared for a Supplier of Last Resort (SoLR) event where necessary, to minimise consumer detriment. We want to ensure that consumers are protected where suppliers are failing to meet their obligations.
3. **Arrangements for managing supplier failure and market exit** – we are considering a range of options to limit consumers’ and other suppliers’ exposure to the costs of failures, including new rules or restrictions on how suppliers hold and use customer credit balances. This will ensure strong consumer protections and minimise wider market impacts and costs that fall on remaining suppliers. We will review our SoLR process and revocation powers, to strengthen our process for appointing a new supplier effectively and quickly when a supplier fails, and review whether we need additional tools to manage orderly market exit in other exceptional cases.

1.3. This document sets out and seeks stakeholders’ views on our proposals for amending the criteria and process for market entry. We also seek views on high-level options for new ongoing requirements on suppliers, during their operation in the market, and we expect to bring forward proposals in this area early next year.

1.4. We intend to consult separately in respect of the market exit arrangements and protections. A key part of this will be considering increased rules or restrictions on the accrual, holding and use of customer credit balances. We will shortly issue a Request For Information from suppliers to give us a better understanding of credit balance practices across the market. In the meantime we have taken action to strengthen the consumer safety net arrangements, by enabling an appointed SoLR to seek to recover costs (if appropriate)

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<sup>1</sup> 2018/19 Forward Work Programme: <https://www.ofgem.gov.uk/publications-and-updates/forward-work-programme-2018-19>

<sup>2</sup> June 2018 open letter: [https://www.ofgem.gov.uk/system/files/docs/2018/06/180611\\_supply\\_licensing\\_review\\_open\\_letter\\_for\\_publication.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/06/180611_supply_licensing_review_open_letter_for_publication.pdf)

associated with honouring credit balances for customers who have switched away from the failing supplier.<sup>3</sup>

## Context and related publications

1.5. Certain activities within the gas and electricity markets are prohibited without a licence.<sup>4</sup> The Gas Act 1986 and the Electricity Act 1989 (together the “Acts”) provide for the Gas and Electricity Markets Authority<sup>5</sup> to grant licences to parties allowing them to undertake these prohibited activities.<sup>6</sup> The Acts allow the Authority to make Regulations<sup>7</sup> which set out the prescribed form and manner of licence applications.<sup>8</sup>

1.6. From time to time we review our licence application process to ensure that it remains fit for purpose. Our last substantial review concluded in 2010.<sup>9</sup>

1.7. Once a licence is granted, the licence holder must comply with the relevant licence conditions.<sup>10</sup> We publish reports on supplier compliance, most recently our Compliance and Enforcement Report (August 2018).<sup>11</sup> Our compliance and enforcement work aims to promote a culture where suppliers put energy consumers first, and act in line with their obligations, thereby increasing consumer trust in the market.

1.8. If a supplier exits the market due to financial failure, Ofgem may need to intervene to revoke the licence and appoint a SoLR to supply the failed supplier’s customers. Our published guidance outlines the process and criteria we consider when appointing a SoLR.<sup>12</sup>

### Interactions

1.9. *Future Retail Market Design*: Based on the extensive engagement and analysis during our call for evidence<sup>13</sup> on the current “supplier hub”<sup>14</sup> model, Ofgem concluded that current retail market design may not be fit for purpose for energy consumers over the longer term, and there is a strong case for considering fundamental reforms. In line with this conclusion, Government and Ofgem have recently launched a comprehensive joint review into the retail

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<sup>3</sup> Licence modification decision: <https://www.ofgem.gov.uk/publications-and-updates/decision-modify-solr-supply-licence-conditions>

<sup>4</sup> See section 5 of the Gas Act 1986 and section 4 of the Electricity Act 1989.

<sup>5</sup> References to the “Authority”, “Ofgem”, “we” and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (“Ofgem”) supports GEMA in its day-to-day work.

<sup>6</sup> See section 7A of the Gas Act 1986 and section 6 of the Electricity Act 1989.

<sup>7</sup> See the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2010 (SI 2010 No. 2154) and the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2010 (SI 2010 No. 2155).

<sup>8</sup> Section 7B of the Gas Act 1986 and section 6A of the Electricity Act 1986.

<sup>9</sup> <https://www.ofgem.gov.uk/ofgem-publications/59486/appregsdecisionfinalpdf>

<sup>10</sup> Gas and electricity supply licence standard conditions can be found here: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>

<sup>11</sup> <https://www.ofgem.gov.uk/publications-and-updates/retail-supplier-compliance-and-enforcement-report-springsummer-2018>

<sup>12</sup> <https://www.ofgem.gov.uk/publications-and-updates/supplier-last-resort-revised-guidance-2016>

<sup>13</sup> <https://www.ofgem.gov.uk/publications-and-updates/future-supply-market-arrangements-call-evidence>

<sup>14</sup> We call this the ‘supplier hub’ because the supplier is positioned as the primary intermediary between consumers and the energy system. With this position comes a wide range of roles and responsibilities that have become entrenched in legal frameworks, licensing arrangements and industry rules. For consumers, it means they are obliged to access the energy system through a licensed supplier, with these firms recovering costs arising through their energy use.



energy market that will consider options for enabling new business models, while ensuring future consumers are protected.

1.10. We acknowledge that in order to ensure consumers are protected, it may be necessary to take a different approach to licensing market participants in the longer term. Although arrangements could change in the future, there would still be a need to apply an appropriate level of scrutiny for new entrants in the retail market. We do not consider that anything within our proposals in this consultation would create a significant barrier for any new entrant or innovators.

1.11. Retail Price Cap: In accordance with the Domestic Gas and Electricity (Tariff Cap) Act 2018, we are implementing a default tariff cap to come into effect from 1 January 2019. This cap will protect default tariff and Standard Variable Tariff (SVT) customers from being overcharged for the energy they use. We published the decisions we have made on the methodology for setting and updating the default tariff cap on 6 November.<sup>15</sup>

1.12. The legislation requires that we must set the cap with a view to protecting existing and future customers who pay standard variable and default rates. By protecting default tariff customers, we expect the cap to prevent them from being overcharged, and ensure they pay prices that more closely reflect the underlying cost of supplying them energy. In protecting default tariff customers, we are required to have regard to a number of matters:

- the need to create incentives for holders of supply licences to improve their efficiency;
- the need to set the cap at a level that enables holders of supply licences to compete effectively for domestic supply contracts;
- the need to maintain incentives for domestic customers to switch to different domestic supply contracts; and
- the need to ensure that holders of supply licences who operate efficiently are able to finance activities authorised by the licence.

1.13. We consider we have set the allowance at a level which delivers a cap that meets the objective to protect consumers. We have set the cap with reference to our estimate of efficient costs, so we consider that an efficient supplier will be able to finance its activities. The cap also includes a headroom allowance, over and above our estimate of efficient costs and profit to allow for uncertainties. In setting the level of the headroom we considered a range of possible uncertainties. While it is not possible to estimate the cost, frequency or likelihood of events such as supplier failures, we note that in some circumstances some proportion of the headroom allowance may need to be used to cover costs, such as the mutualisation arrangements as part of the Renewables Obligations, in the event they materialise. We have undertaken a sensitivity analysis to consider the impact of such events occurring, to understand potential upward pressure on the headroom allowance. We consider we have included an appropriate level of headroom in the cap.

1.14. We have set the cap at a level at which we consider efficient suppliers can provide a reasonable level of customer service, and we expect suppliers to maintain service quality, ensuring they meet their obligations.

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<sup>15</sup> <https://www.ofgem.gov.uk/publications-and-updates/default-tariff-cap-decision-overview>

## Consultation stages

### Entry

1.15. After considering the responses to this consultation we expect to finalise our proposals for new entry criteria and consult again in early 2019 on revised Regulations for licence applications,<sup>16</sup> a new application form and associated guidance. In light of our final proposals we will also review the supply licence application fees and the application processing time period. When updating the Regulations, we expect to take the opportunity to make housekeeping changes relevant to all licence types.

1.16. Subject to our proposals, we expect to implement a new regime in Spring 2019.

1.17. While we are consulting on our proposals we expect to initiate the revocation of a number of unused or dormant supply licences, in accordance with the terms contained in those licences.

### Ongoing requirements

1.18. Following initial views to this consultation, we anticipate consulting on proposals for the introduction of new standard licence conditions placing ongoing requirements on suppliers relating to financial stability and/or conduct. Initial options are outlined in Chapter 7.

### Exit

1.19. We intend to consult separately in respect of the market exit arrangements and protections. We will shortly issue a Request For Information to suppliers to give us a better understanding of credit balance practices across the market. We will also consider whether any changes to the SoLR process or licence revocation conditions are required.

## How to respond

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

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

## Your response, data and confidentiality

1.22. 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

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<sup>16</sup> Any changes to the current application process will take effect when the proposed new Regulations come into force, which will be at least 21 days after they are made by the Authority.

you do want us to keep your response confidential, please clearly mark this on your response and explain why.

1.23. 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.

1.24. If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, 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 2.

1.25. 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

1.26. 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](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).


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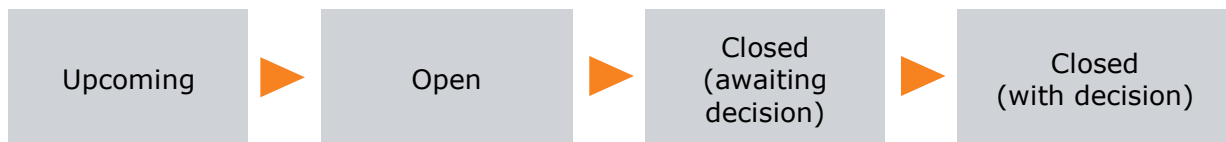
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## 2. The case for change and our aims

### Section summary

Here we set out some of the recent changes in the retail energy market and our aims in strengthening our approach to licensing and regulating energy suppliers.

### Question:

**Do you agree with the principles we have set out to guide our reforms?**

## Dynamics in the retail energy market

2.1. The retail energy market is very different to when we last reviewed our approach to licensing. The number of energy suppliers in Great Britain has grown significantly in the last half decade, from 27 active domestic suppliers in December 2014 to 73 by June 2018, and the market share of small and medium-sized suppliers has grown to more than 24%.<sup>17</sup>

2.2. Over this time we have seen an increase in the variety of business models adopted by new entrants, with innovative services being offered, and new ways to engage consumers and improve quality of service. Seven of the top 10 suppliers, including the top three, on Citizens Advice's customer service comparison tool are either small or medium-sized suppliers.<sup>18</sup> The growth of small suppliers has increased price competition and in turn put pressure on larger suppliers to improve their customer service offering.

2.3. Consumer engagement in the market has improved, with switching rates up to around 19% this year – the fourth consecutive annual increase – which is consistent with the increase in the number of active suppliers and the greater variety of products and sustained price differentials.

2.4. However, the expansion of small and medium suppliers has also created some risks for consumers. We highlighted in our recent State of the Market report<sup>19</sup> that customer service performance varies across suppliers, with variation in key quality indicators being especially high among small suppliers. While some small suppliers tend to outperform larger suppliers, others have not invested in customer service as they grow, leading to a decline in standards. We have also seen a number of suppliers getting into compliance difficulties, with at times unacceptable levels of customer service. We are particularly concerned that some suppliers

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<sup>17</sup> Ofgem's State of the Market Report 2018:

[https://www.ofgem.gov.uk/system/files/docs/2018/10/state\\_of\\_the\\_energy\\_market\\_report\\_2018.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/10/state_of_the_energy_market_report_2018.pdf)

<sup>18</sup> Ratings for April-June 2018: <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/citizens-advice-consumer-work/supplier-performance/energy-supplier-performance/compare-domestic-energy-suppliers-customer-service/>

<sup>19</sup> <https://www.ofgem.gov.uk/publications-and-updates/state-energy-market-2018>

are underestimating their responsibilities when it comes to supporting consumers in vulnerable situations.

2.5. A number of suppliers have also failed in recent years, and others have not met their financial commitments under Government schemes such as the Renewables Obligation. Where suppliers have ceased trading, we have had to run our Supplier of Last Resort process to ensure consumers are protected.<sup>20</sup>

2.6. Financial difficulty and poor customer service are often interrelated. Suppliers who are pricing their tariffs very low may be doing so in a manner that does not reflect their operational costs. They may also be ill-prepared for sudden customer growth, leading to inadequate customer care and potential non-compliance with their licence conditions. Suppliers with insufficient capabilities to meet their customer service obligations may, in turn, experience higher levels of churn than expected, leading to loss of revenue and potential financial difficulty.

2.7. A supplier that is under-performing, or one that ultimately goes out of business, can cause direct detriment to customers. Customers may experience poor service causing inconvenience or stress, particularly if they are concerned about their supply and/or payments. If a number of suppliers are providing poor quality of service, or exiting the market in a disorderly way, this may lead to poor outcomes for consumers as a whole. The competitive dynamic of the market may be undermined if confidence in switching to small and newer entrants is reduced. Supplier failure can also lead to distortions in the market as certain costs of failure may need to be picked up by other suppliers.

2.8. Market exit is a normal occurrence in any competitive market, and supplier failure can occur for a number of reasons. Our licensing and regulatory regime does not seek to prevent this, rather we are focussed on limiting consumers' and other suppliers' exposure to the costs of failures.

## **Aims of our review**

2.9. This review seeks to strengthen our regulatory regime to raise standards around financial resilience and customer service. Our approach needs to provide an appropriate balance between protection for consumers against suppliers' financial instability and poor customer service, while ensuring the arrangements do not create undue barriers to innovation and competition.

2.10. At a high level, we want to ensure that well-prepared participants can enter the market, and maintain the possibility that suppliers may fail, but for this to be minimally disruptive. To achieve this we consider there is a need to (i) strengthen requirements at entry, (ii) impose new requirements on suppliers to improve our ongoing oversight and promote higher financial and risk management standards, and (iii) ensure there are robust arrangements for when a supplier exits.

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<sup>20</sup> The SoLR arrangements provide a safety net for customers if a supplier fails, by protecting their credit balances and ensuring continuity of supply. They also minimise the costs of failure which may be socialised across the rest of the industry, and ultimately passed through to all consumers. By taking a competitive approach, with suppliers bidding to be appointed as the SoLR, we have sought to minimise the distortion caused by socialising these costs.

2.11. Once complete our final proposals across these three areas will represent a coherent package of reforms that together will aim to ensure the regulatory framework continues to adequately protect consumers. The overarching principles guiding our reforms are that:

- **Suppliers should adopt effective risk management and be adequately prepared and resourced for growth.** Significant problems can occur when new entrants grow too quickly/beyond their capabilities. Overreliance on customer credit balances as a source of working capital can be unsustainable and shifts the costs of failure to the market and consumers. Suppliers should take a responsible approach to growth and bear an appropriate share of the risk, in order to reduce consumers' exposure to failure.
- **Suppliers should maintain the capacity and capability to deliver a quality service to their customers, and foster an open/constructive dialogue with Ofgem.** Energy is an essential service and as such there are certain minimum standards which suppliers must meet. Suppliers should understand, and be prepared to comply with, their obligations from the outset and as they grow. They should also be prepared to maintain a constructive relationship with Ofgem as the regulator.
- **We maintain proportionate oversight of suppliers, and effective protections for consumers exist in the event of failure.** Energy supply is a competitive market and we will not operate a 'zero failure' regime, but we need to ensure that arrangements are robust to protect consumers when failure occurs. Our reforms aim to improve our visibility of market risks and our ability to act where needed, and minimise the wider market impacts of failure.
- **Our licensing regime facilitates effective competition and enables innovation.** Our reforms should not deter innovative and un-tested business models, provided the new entrant is well prepared. We will adopt a proportionate, risk-based approach, that is also in line with our commitment to principles based regulation.

2.12. **Do you agree with the principles we have set out to guide our reforms?**

## 3. Entry criteria: background

### Section summary

This chapter outlines the background to our supply licence application procedure and provides a summary of the current process.

### Ofgem's licence application process

3.1. In dealing with applications for licences, we comply with our principal objective to protect the interests of existing and future consumers.<sup>21</sup> Our criteria for assessing supply licence applications is set out in the Regulations and associated guidance.<sup>22</sup> We review our approach to granting licences from time to time to ensure that it remains robust and fit for purpose.

#### Background to the licensing regime

3.2. From market opening until 2003, licence applicants were required to submit a considerable amount of information including business plans, financial statements and arrangements to comply with specified licence conditions. This approach was developed in the context of concern about the stability of newly liberalised markets, and at a time when there were few well-established systems for interactions between non-vertically integrated players.

3.3. Once the retail market became more established, industry entry testing processes had been operating for some time, and we gained experience regulating the different types of licensees, we largely removed the financial and business plan information requirements. We implemented a simplified licence application process, with reduced barriers to entry, which we considered would ensure appropriate levels of customer protection while removing unnecessary burdens. This also removed concerns about misleading signals that Ofgem 'approved' entrants' business plans.<sup>23</sup> We considered that financial institutions, parent companies and other equity providers are able to demand, and be more capable of conducting, more rigorous tests than Ofgem, and that the entry testing and credit cover arrangements under the industry codes provided protection.

3.4. Since 2003 we have reviewed the licence application process from time to time. Our last substantial review was in 2010.<sup>24</sup> The primary change introduced was the shift from a 'one size fits all' approach to a risk-based, tiered application process, whereby greater scrutiny could be applied where deemed necessary rather than in all cases.

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<sup>21</sup> <https://www.ofgem.gov.uk/publications-and-updates/powers-and-duties-gema>

<sup>22</sup> <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/application-process>

<sup>23</sup> <https://www.ofgem.gov.uk/sites/default/files/docs/2002/09/1870-62reviewdoc.pdf>

<sup>24</sup> <https://www.ofgem.gov.uk/publications-and-updates/gas-and-electricity-licences-changes-application-regulations-and-revocation-schedules-future-licences>



## Current process

3.5. We require applicants to provide their company details, including details of any parent company and/or ultimate controller. Applicants provide an overview of their proposed arrangements to enter the supply market, and provide declarations in respect of previous disqualifications or unspent criminal convictions. We also require a declaration that the applicant has read and understood the relevant licence conditions.

3.6. Our assessment takes into account the readiness and intent of the applicant to use the licence for the purpose for which it is granted (for example, we look for applicants' awareness of the industry code<sup>25</sup> accession and market entry processes, and IT systems requirements). We check public records to confirm the solvency of the applicant and parent/ultimate holding company (if applicable), and undertake checks on the current directors and major shareholders in respect of disqualification, bankruptcy and insolvency.

## Other arrangements

3.7. A licence must be granted by Ofgem before a participant can enter the energy supply market.<sup>26</sup> There are however also a range of other market entry requirements and arrangements that sit outside of our processes.

## Industry market entry processes

3.8. Before an electricity supplier can enter the market they must go through a process of systems testing to 'qualify' for both the Balancing and Settlement Code (BSC) and the Master Registration Agreement (MRA). The BSC and MRA qualification processes run simultaneously and test that a supplier's systems can communicate with the key central systems that support the electricity market, and that they can process all the data flows that underpin the market. This process can take between six and 12 months and is complete when the BSC Performance Assurance Board (PAB) and MRA Executive Committee (MEC) give their approval. The supplier can then enter a process of Controlled Market Entry (CME), whereby they can commence supply but are restricted in the number of customers they can onboard. This allows their systems to be tested in the live environment while ensuring risks are minimised and problems can be identified and rectified before full entry.

3.9. Entry to the gas supply market does not require this extended lead time as the system testing requirements are not the same.<sup>27</sup> Both gas and electricity suppliers are required to go through the DCC user entry process which typically takes six months, however this can run alongside other market entry arrangements provided that gas only suppliers are DCC users by the time they have gained 250 meter points, and electricity suppliers are DCC users by the time they exit CME.<sup>28</sup>

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<sup>25</sup> Energy suppliers must become party to, and comply with, a number of industry codes under the conditions of their licence.

<sup>26</sup> Unless an exemption applies.

<sup>27</sup> In the gas market, the Shipper accedes to and must meet relevant industry requirements (and as such bear the associated risk) that sit with the supplier in electricity.

<sup>28</sup> <https://www.ofgem.gov.uk/publications-and-updates/smart-meter-rollout-dcc-user-mandate-future-rollout-plans-and-consumer-experience>

## Routes to market

3.10. Parties seeking to enter the supply market may apply directly to Ofgem for a licence. However, we have increasingly seen new entrants opt to enter the market using an ‘off the shelf’ supply company which has been set up by a managed service provider.

3.11. Managed service providers are typically applying for a licence on behalf of a shell company, taking the entity through the initial market entry testing requirements, and then selling this company on to expedite entry for a new supplier. Central to this proposition is usually buy-in to the service provider’s IT systems and ongoing consultancy support.

3.12. While this route to market has brought benefits to competition and has been the entry route for a significant number of new suppliers, it means there is a risk that companies can bypass both Ofgem’s licensing criteria, and the market entry tests which we previously considered played a role in filtering out potentially under-prepared and/or under-resourced participants.

3.13. Our 2010 review implemented changes to the licence application Regulations and revocation schedules aiming to limit speculative licence applications,<sup>29</sup> however we did not seek to restrict applications from parties involved in facilitating market entry. The impact of our current review on this route to market is explored in Chapter 6.

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<sup>29</sup> We didn’t consider it appropriate for a licence to be issued and then not used for the intended purpose for some considerable time, if at all. We acknowledged that some applicants may be applying for a licence too far in advance of when they intended to carry out the activity (and without having properly investigated or considered other relevant industry requirements).

## 4. Entry criteria: policy options

### Section summary

Our view is that the existing framework needs to be strengthened to strike a better balance in terms of reducing consumers' exposure to risks and costs of poor customer service and of supplier failure, and enabling innovation and market entry, thereby promoting effective competition. This chapter sets out the range of options we have considered, and our proposed way forward.

### Question:

**Do you agree with our proposal to introduce new tougher entry requirements and increase scrutiny of supply licence applicants? Do you agree this can be achieved with increased information requirements and qualitative assessment criteria?**

## Broad options

4.1. In undertaking this review we have considered a spectrum of broad options for potential reform and have looked at regulatory regimes in other sectors and countries.

4.2. We are proposing to increase our scrutiny of suppliers at entry, by requiring applicants to demonstrate that they are adequately resourced and are capable of delivering against their key customer-related obligations (Option 2, below).

4.3. We consider this would provide the right balance between reducing consumer's exposure to risk, and continuing to enable innovation and competition. Raising the level of information required at entry would strengthen the licensing process, enabling us to identify (and act on) markers of potential poor conduct or financial instability at an earlier stage, while maintaining a proportionate, risk-based approach. It will also act as a deterrent for under-prepared potential entrants, ensuring they spend more time making the necessary preparations before being able to enter the market.

4.4. Below we outline the spectrum of approaches we have considered, and summarise our assessment of these options in Table 1. Chapter 5 sets out our proposed approach in more detail.

### Option 1 – Status quo

4.5. Our current approach to licensing suppliers – outlined in Chapter 3 – represents a low barrier to market entry. Our assessment process takes into account the fact that various industry codes and agreements set out in detail the industry processes to which a licensee must adhere, and our aim of minimising regulatory burden and maximising the opportunity for new applicants to enter the retail energy market.

4.6. However, as Chapter 2 sets out, developments in the retail energy market demonstrate that this approach is no longer appropriate, as it does not sufficiently mitigate the risks of ill-prepared participants entering the market.

### **Option 2 - Increased information requirements with qualitative assessment criteria**

4.7. Under this approach, we would introduce new requirements that applicants must meet, to ensure they are adequately prepared and resourced to operate in the energy supply markets. This would include requirements around financial resources, market understanding and capabilities to meet the obligations in the supply licence for providing quality of service befitting an essential service. If an applicant were not able to demonstrate they were appropriately prepared, we would reject their licence application. In Chapter 5 we set out our proposed criteria.

4.8. Increasing the information requirements for an enhanced, risk-based qualitative assessment enables us to:

- prevent under-prepared, under-resourced or unfit entrants to the energy supply markets, without unduly inhibiting competition,<sup>30</sup> and
- gain a greater understanding of new entrants' businesses and financial footing, facilitating effective risk-based monitoring and ongoing engagement once licensed.

4.9. Companies that are inadequately prepared for operating in the markets would not be able to return information of sufficient detail and quality to pass our assessment (against a set of transparent and objective criteria).

4.10. If a supplier is clearly under-resourced or under-prepared to meet their obligations, we would be able to prevent them from entering the market and causing detriment. In addition, we would gain better insight into new entrants, as every new supplier would provide a similar set of information and be risk-assessed at the outset, therefore allowing for more targeted engagement as part of our existing compliance monitoring activities with those who do enter the market.

### **Option 3 - Detailed information requirements with financial scrutiny and/or specific capital requirements**

4.11. This approach would require applicants to provide full business proposals and detailed accounts and projections (eg five years). We have also considered setting a minimum capital requirement that new entrants would have to meet.

4.12. We believe that an approach involving heavy scrutiny of business plans or forensic examination of financial information would not be proportionate in protecting consumers, while facilitating competition and innovation. It would create a significant barrier to entering the market and would inhibit innovation at a time when technological change is starting to create new opportunities for products and services that engage consumers and help make the

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<sup>30</sup> To fully achieve this, we need to restrict purely speculative licence applications, to reduce instances of new suppliers bypassing entry checks through the purchase an 'off the shelf' or dormant licensee. We propose to achieve this through changing the timeframe for applying for a licence as set out in Chapter 6.

overall energy system more flexible and efficient, delivering better outcomes for consumers in terms of quality of service and price.

4.13. It is also important to remember that any assessment upon entry can never provide ongoing assurance. Therefore, any reduction in risk that might be achieved through this option is likely to be short-lived.<sup>31</sup>

4.14. In respect of requiring entrants to demonstrate a minimum level of capital, it is our view that it would be very challenging to set a limit that could be applied fairly to the range of companies that seek to enter the market. The cost base for each supply company varies significantly depending on a range of factors both internal and external to the company, and can be influenced by other unknown variables, for instance new technologies and innovations.

4.15. Moreover, we would be concerned that a prescribed minimum capital requirement, even if modestly set, could prevent small and niche enterprises from entering the market. This could prevent new innovative service offerings from smaller entities that have the potential to increase overall levels of customer engagement. Setting a very low level for such a requirement, in order to minimise this risk, is likely to undermine its original intent.

**Table 1: Assessment of broad policy options**

Broad approach	Benefits	Risks
<p><b>Option 1</b> Current requirements (status quo)</p>	<ul style="list-style-type: none"> <li>• Lowest barrier to new entrants/competition</li> <li>• Short assessment time period/route to market</li> <li>• No misleading signals re Ofgem 'approved' plans</li> </ul>	<ul style="list-style-type: none"> <li>• Licences could be granted to under-prepared or under-resourced companies, which expose consumers to customer service and supplier failure risks</li> <li>• Companies can bypass assessment (if entering the market via an 'off the shelf' licensed company)</li> <li>• Limited basis to reject applications</li> </ul>
<p><b>Option 2</b> Increased information requirement with qualitative assessment criteria</p>	<ul style="list-style-type: none"> <li>• Enables Ofgem to prevent unprepared or purely speculative applicants from gaining a licence</li> <li>• Raised barrier without stifling competition or discriminating against new business models</li> <li>• Brings forward key elements of existing compliance / monitoring framework and gives us earlier insight</li> <li>• Not unduly onerous on either applicant or Ofgem and therefore a proportionate response</li> </ul>	<ul style="list-style-type: none"> <li>• Entry assessment is no guarantee of future standards or financial stability</li> <li>• Potential for misinterpretation that we are making judgements on prospects of success</li> </ul>
<p><b>Option 3</b> Detailed information</p>	<ul style="list-style-type: none"> <li>• Arguably lowest exposure of customers to risks associated with financial instability (but</li> </ul>	<ul style="list-style-type: none"> <li>• Not flexible for all potential entrant types</li> </ul>

<sup>31</sup> We consider how ongoing risks while a supplier is operating in the market are managed later in this document.

requirement with financial scrutiny and/or specific capital requirements	risk reductions likely to be short lived without further interventions)	<ul style="list-style-type: none"><li>• Disproportionate resource/effort – no test at entry can guarantee ongoing standards/stability</li><li>• Financial projections beyond year 1 are highly speculative</li></ul>
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**4.16. Do you agree with our proposal to introduce new tougher entry requirements and increase scrutiny of supply licence applicants? Do you agree this can be achieved with increased information requirements and qualitative assessment criteria?**

## 5. Entry criteria: initial proposals

### Section summary

Below we outline our proposals for tougher requirements for granting supply licences. Further information on the information that applicants would be expected to provide as part of a new licence application process is included in Appendix 1.

### Questions:

**Do you agree that our proposed assessment criteria for supply licences applications are appropriate?**

**Do you agree that applicants should provide evidence of their ability to fund their activities for the first 12 months, and provide a declaration of adequacy?**

**Do you agree with the specific information we would generally expect applicants to provide (in Appendix 1)? If not, why/what would you add or change?**

**Do you agree that applicants should provide a narrative in respect of their key customer-related obligations under the licence?**

**Do you agree with the areas we would generally expect applicants to cover (in Appendix 1)? If not, why/what would you add?**

**Do you agree that we should ask additional 'fit and proper' questions as part of the application process (as set out in Appendix 1)?**

## Proposed new criteria

5.1. In line with the approach set out in the previous chapter, we are proposing to introduce the following criteria for our assessment of future supply licence applications:

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

5.2. The onus would be on applicants to provide us with information – as set out in the application form and guidance – to demonstrate how they meet the criteria (see below and Appendix 1 for more detail). We would risk assess the responses based on guidance

specifying the objective considerations we would apply, and check that the information provided is consistent across the different criteria. Where our risk assessment identifies potential concerns, applicants would need to provide us with additional information to satisfy us that they meet the application criteria. If further information is not provided or that information remains unsatisfactory, we would formally reject the application.<sup>32</sup>

5.3. While these requirements will make entry to the supply market more difficult, we believe they do not introduce undue regulatory burden or unreasonably restrict competition. The information we would require should be readily available to any applicant, regardless of their size or business model, that has a sufficiently thought-through proposition and access to the resources and capabilities necessary to offer an essential service to consumers.

**5.4. Do you agree that our proposed assessment criteria for supply licences applications are appropriate?**

5.5. Below and in Appendix 1 we set out more information on these criteria, including our rationale for including them and broadly what information we would require.

**Criteria 1: Resources**

5.6. Under the current process applicants must provide a summary of their proposed arrangements to commence the licensable activity. We use this information to assess their readiness to enter the market, ensuring that they are aware of the key requirements of the market entry process.

5.7. Under the proposed strengthened arrangements, we would expand on this by requiring the applicant to provide us with their proposal to enter the market in more detail (beyond the processes of market entry), including their operational and financial resource requirements. They would also need to demonstrate that they can fund that proposal.

5.8. Applicants would need to satisfy us that they:

- understand the costs they will face, both internal and external (and how these will change/be managed as their business scales);
- propose a pricing model that is based on reasonable assumptions, and a plan for realistic growth;
- have made sufficient provision for human resources – with the necessary capabilities – in the context of their entry and growth plans (with particular reference to maintaining customer service standards);
- understand key risks of operating in the market, are aware of the cash flow issues these can cause, and have a plan to mitigate these (inc seasonality, wholesale

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<sup>32</sup> Applicants may withdraw from the process if they decide they are unable to satisfy the application requirements. We already experience a proportion of applicants withdrawing if it becomes apparent through further questions that they may not be ready/prepared to enter the market.



volatility, churn, bad debt, failure to achieve expected growth, policy and environmental scheme requirements).

5.9. Having set out their proposal to enter the market, the applicant must provide evidence that it has, or has access to, the amount of funding it requires for its first year of operation. We expect applicants to submit their financial projections, with realistic stress-testing and a narrative on their capabilities to manage their working capital.<sup>33</sup> This should be supported by a written declaration from the director(s)/operator(s) that they have satisfied themselves that they have adequate financial and operational resources to undertake their activities as an energy supplier for the next 12 months.

5.10. However, we will not assess business plans or financial projections for future viability or success. Our proposals will therefore not inhibit new, untested business models. Nor should our granting of a licence imply any judgement of the prospects or profitability of the intended business. We are also not proposing to set specific stress-test scenarios or prescribed capital requirements. The effectiveness of an applicant's risk management and compliance strategies is the responsibility of the directors or the persons with effective control of the business. It is our expectation that any reasonable applicant should be able to provide a narrative on their awareness and approach to risk.

5.11. We consider that this proposal strengthens our existing approach, and is flexible enough to allow for new and innovative business models. Our focus would be on assessing that applicants have a considered plan to enter the market, that is based on reasonable assumptions, and supported by an appropriate level of resources. We would apply greater scrutiny where we identify plans as high risk, for example if an applicant proposes an aggressive growth strategy or loss-leading tariff, or where the applicant intends to rely on customer credit balances as a source of capital.

5.12. While we are not proposing to introduce a minimum capital requirement, entrants would be expected to bear an appropriate share of the risk of their venture. We would therefore expect applicants to demonstrate that they have adequate funding – equity, debt finance, or other means – without having to rely on customer credit balances to fund a significant portion of their working capital requirements. We discuss the issue of customer credit balances below in Chapter 8, and will consider in a separate consultation whether additional rules or restrictions in respect of credit balances are needed.

5.13. Further details on the potential information requirements are in Appendix 1.

**5.14. Do you agree that applicants should provide evidence of their ability to fund their activities for the first 12 months, and provide a declaration of adequacy?**

**5.15. Do you agree with the specific information we would generally expect applicants to provide (in Appendix 1)? If not, why/what would you add or change?**

5.16. In Chapter 7 we consider options for potential ongoing requirements on licensees in respect of their financial and operational resources. Detailed proposals in this area will be a focus of a further consultation under this review.

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<sup>33</sup> Providing 12 months of financial information will demonstrate the annual supply cycle, with effects of seasonality, timing of network and scheme charges, etc. Beyond this, projections would be increasingly speculative. We deal with potential ongoing monitoring in Chapter 7.

## Criteria 2: Regulatory obligations

5.17. Licensees must be able to adopt and maintain processes and procedures to ensure that they fully comply with their licence obligations. We will therefore require applicants to be planning robust compliance policies from the outset.

5.18. Prior to the Supply Licence Review in 2007,<sup>34</sup> applicants for a domestic supply licence had to provide us with details of their proposed arrangements to comply with specified licence conditions. This was in line with a licence requirement for suppliers to produce a series of codes of practice for the approval of the Authority. The requirement to produce these codes of practice was removed by the Supply Licence Review, and therefore we removed the related requirements from the application process.

5.19. Our guidance is clear to applicants, at entry, of the need to comply with the relevant licence obligations from the date the licence is granted. However through our compliance work we have noted cases of new suppliers underestimating the cost (both time and resource) of compliance, and that they do not always appreciate fully the obligations that go with providing an essential service to customers. If these suppliers are, in turn, under-pricing their tariffs, this increases the financial pressure on them to cut corners in complying with regulation, particularly their customer service arrangements. Rapid customer growth exacerbates this. This new criteria on preparedness to meet regulatory obligations will reduce this risk.

5.20. As part of our Future Retail Regulation project<sup>35</sup> we have both simplified the licence and made it easier for suppliers to understand the obligations to which they are signing up. For example, we published a series of plain English licence guides<sup>36</sup> explaining the key areas of the licence and the obligations suppliers need to understand. These guides cover obligations relevant to both domestic customers (including those in vulnerable circumstances) and non-domestic customers, including overarching standards of conduct.<sup>37</sup> Other initiatives to help improve newer suppliers' understanding and attitude to compliance include publishing lessons learned documents and showcasing good practice. However, we consider that – alongside work from Ofgem to support new suppliers – additional entry requirements are needed to reduce the risk of customers being exposed to poor quality of service.

5.21. To ensure that suppliers have a better understanding of the importance of compliance from the outset, and have plans in place to meet the minimum service standards, we are proposing to require supply licence applicants to demonstrate their awareness of key customer service-related obligations for the customer base they intend to supply and describe the practical steps they are taking to comply with these. We would highlight in our published guidance which areas we expect applicants to cover in particular.<sup>38</sup> Further details can be found in Appendix 1.

5.22. While this requirement on entry cannot give ongoing assurance about an applicant's standards of customer service, it encourages early preparation, provides us with visibility of the applicant's approach at the outset, and supports an open and constructive dialogue for

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<sup>34</sup> SLR Initial Proposals: <https://www.ofgem.gov.uk/ofgem-publications/38927/14581-supplylicencereview.pdf>

<sup>35</sup> <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/future-retail-market-regulation#block-views-publications-and-updates-block>

<sup>36</sup> <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/guides-supply-licences>

<sup>37</sup> Covering domestic customers, vulnerable customers and microbusinesses.

<sup>38</sup> In line with our principles-based approach to regulation, we would not prescribe what compliance plans should look like.

our ongoing compliance monitoring. It will also prevent underprepared suppliers from entering the market.

**5.23. Do you agree that applicants should provide a narrative in respect of their key customer-related obligations under the licence?**

**5.24. Do you agree with the areas we would generally expect applicants to cover (in Appendix 1)? If not, why/what would you add?**

### **Criteria 3: 'Fit and proper'**

5.25. Under the current regime we ask applicants a range of questions which are in the nature of a 'fit and proper' test. For instance, we ask for disclosures regarding criminal convictions or disqualifications, and any licence refusals or revocation by us (or, for Tier 2 applications,<sup>39</sup> any other regulatory bodies). We propose to enhance this requirement by asking for additional disclosures, including on: insolvency; involvement in previous SoLR event; and compliance / enforcement history.<sup>40</sup> Further details are in Appendix 1.

5.26. We already check for and consider these factors when assessing licence applications under the current regime. However, requiring disclosures in these areas has additional benefits, including transparency (by raising awareness that these are areas we will consider) and fostering an open and honest dialogue from the outset. Introducing new explicit requirements will also make it easier for Ofgem to reject applications. If a relevant matter was not disclosed during the application process, this could also later lead to revocation of the licence.<sup>41</sup>

5.27. An applicant with a track record in any of the above would not necessarily be automatically rejected. We would take account of the circumstances of the case and assess whether any information brought to our attention is relevant to our decision to grant a licence. However, it would be more difficult for such an applicant to be awarded a licence and any application would be subjected to additional scrutiny. We would also place importance on applicants being open and honest with us. Deliberate failure to disclose any relevant information that comes to our attention may as a result lead to the application being rejected.

5.28. Our assessment of an applicant's suitability to hold a licence is solely in the context of the objectives of our licensing regime, and based on the information that is available to us at the time. The grant of a licence does not give ongoing warranty that those involved in the business are 'fit and proper' persons.

**5.29. Do you agree that we should ask additional 'fit and proper' questions as part of the application process (as set out in Appendix 1)?**

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<sup>39</sup> All applications are initially processed as Tier 1. If an application is classed as higher risk, it may be escalated to Tier 2 or 3, leading to further information requirements.

<sup>40</sup> Nonetheless it should be noted that while additional 'fit and proper' style questions will assist us in determining if an applicant should be granted a licence, we do not give any guarantee or warranty under the licensing regime that the licensee or any related person is 'fit and proper'. Any assessment made as part of the application process will be in the context of the objectives of our licensing regime and solely in relation to our decision to grant a licence as applied for.

<sup>41</sup> Under the revocation conditions, the Authority may at any time revoke a licence if satisfied that there has been a material misstatement (of fact) by, or on behalf of the licensee, in making its application for a licence.

## 6. Timing of licensing: initial proposals

### Section summary

Below we explain our proposal to move the timing of the licence application process relative to other market entry processes. This shift will better enable us to scrutinise the plans of, and engage with, the prospective supply licence holder, as part of a strengthened entry regime.

### Question:

**Do you agree that Ofgem’s licensing process should be undertaken closer to proposed market entry? Do you identify any barriers to this approach or any adverse impacts of this change?**

6.1. In Chapter 5 we outlined our proposals for strengthened entry criteria and the requirements on applicants for more in-depth information to demonstrate their preparedness. However, due to systems testing in electricity, licensing today typically takes place several months before a supplier takes on their first customer.<sup>42</sup> We recognise that an applicant may have difficulties meeting some of the information requirements this far in advance of entering the market.

6.2. Moreover, the ‘off the shelf’ model of market entry means that in many cases the eventual supplier has no engagement in the market entry processes, as they only take control of the company after a licence is awarded, and prior to Controlled Market Entry (CME). Our proposed changes would prevent such a situation in the future. Under our proposals we would need to engage with, obtain information from, and assess the people/entity that will actually operate the supply business, and not the managed service providers who are licensing and qualifying companies for onward sale.

6.3. We propose to achieve this by moving when we conduct our entry assessment so that prospective suppliers apply for their licence closer to actual market entry. After initial entry testing under the BSC and MRA, which takes approximately 6-12 months, but prior to CME, we can expect applicants to have an advanced understanding of their business proposition including realistic costs, funding, and pricing strategy.<sup>43</sup>

6.4. By changing the timeline of licensing, we anticipate that managed service providers would still be able to qualify companies through market entry testing for onward sale to a prospective supplier. However they would need to engage/contract with their client prior to licensing, as they would need to be involved in the licensing process.

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<sup>42</sup> As discussed in Chapter 3.

<sup>43</sup> We have also considered a two-stage approach, whereby a licence is granted before entry testing (basic assessment) but a further assessment of plans/resources must be passed before CME. We did not identify that this would be particularly beneficial as it would not significantly reduce the time taken for an assessment prior CME, or reduce the risk for entrants that the second stage assessment would not be passed.

6.5. We anticipate this could elongate the entry timeframe for participants purchasing a pre-qualified company by approximately 3-4 months to allow for the licence application.<sup>44</sup> We do not consider this to be an undue burden as entering the market requires proper preparation and therefore prospective entrants should allow reasonable lead time for the process. Applicants may be able to make other necessary preparations in parallel to their licence application, eg contract negotiations and industry code accessions.<sup>45</sup>

6.6. We also recognise that prospective suppliers who are not using off the shelf software to enter the market would face the risk of going through systems testing without a guarantee they will be licensed, which could impact on their ability to raise initial capital. However, we expect this risk to be mitigated by the provision of clear guidance, outlining our objective assessment approach, enabling potential entrants to have a good understanding of what is required to obtain a licence and communicate that to potential investors. We are also willing to engage, where appropriate, with potential entrants at an early stage.

6.7. We understand that the relevant industry codes would need to make procedural changes and potentially code modifications to facilitate this revised approach, however, our understanding at this stage is that this would not be a significant barrier. We encourage code administrators to respond with their assessment of the extent of change that would be required.<sup>46</sup>

**6.8. Do you agree that Ofgem’s licensing process should be undertaken closer to proposed market entry? Do you identify any barriers to this approach or any adverse impacts of this change?**

**Figure 2: Proposed change to market entry timeline**

**Current timeline (electricity) – licensing at start of market entry process**



**Proposed new model – licensing before Controlled Market Entry**



<sup>44</sup> Currently our processing timeframe is 45 working days, however we expect this will need to be extended to take account of the additional assessment we have proposed. We will consult on a new timeframe when we publish final proposals.

<sup>45</sup> The standard licence condition requires suppliers to accede to/comply with a number of codes, not all of which involve systems testing.

<sup>46</sup> In order to accede to the BSC and MRA and commence their entry testing processes, presently these Codes request confirmation that a licence application has been made.

## 7. Ongoing requirements

### Section summary

We are proposing to put in place new ongoing requirements on all active suppliers. This chapter sets out potential options and the range of approaches we could consider. We are seeking initial views on the options presented.

### Questions

**Do you consider that suppliers should report on their financial and operational resilience on an ongoing basis? If so, do you have any initial views on the content of these reports/statements?**

**Do you have any initial views on the potential introduction of targeted or strategic monitoring/requirements on active suppliers?**

**Do you have any initial views on the potential introduction of prudential/financial requirements on active suppliers?**

**Do you consider that Ofgem should introduce a new ongoing requirement on suppliers to be 'fit and proper' to hold a licence?**

## Financial Resilience

7.1. Our proposed new entry requirements will mitigate the risks of poor outcomes for consumers, and bolster our ability to monitor new entrants, by requiring details of an applicant's plans and resources for at least their initial 12 months' operation. However, checks undertaken at entry will be 'point in time' assessments; there are limitations to the extent that they provide an indication of the potential risks to consumers on an ongoing basis. We are therefore proposing to introduce new ongoing requirements on all active suppliers. This chapter sets out our initial thoughts.

7.2. At this stage we are considering the most effective and proportionate approach to any new ongoing requirements. Our initial view is that any such requirements should be targeted at:

- raising the standard of risk management and planning practices, and promoting a responsible approach to growth;
- enhancing our visibility of, and ability to monitor, potential financial instability in the market so we can act where needed. Enabling us to ensure effective management of any supplier failure;

- minimising the broader market impacts of a supplier failure; and/or
- contributing to maintaining a constructive relationship with Ofgem as the regulator.

### Our current approach to monitoring

7.3. We use a targeted approach to ongoing oversight of suppliers’ financial resilience. Our engagement with suppliers in this area is based on proxy indicators of financial risk, with the purpose of being as prepared as possible to respond to a supplier failure.

7.4. We monitor certain factors which, when considered in combination, may be a precursor to potential financial difficulty. For example, customer growth, tariff pricing, dependency on the balancing mechanism, as well as external factors such as wholesale price spikes, payment deadlines for Government schemes, and other intelligence we have available including evidence of non-compliance with licence conditions.

7.5. In our engagement with newer entrants to the market, we inform suppliers of the importance of communicating with us as a priority if they have any concerns about their financial position, and why it is in company directors’ interests to do so.

7.6. We have set out proposals in Chapter 5 for strengthened requirements whereby suppliers must demonstrate at entry that they have sufficient resources to support their proposition and a strategy for managing financial risks. To build on this, we are considering what measures would be most appropriate to implement across all suppliers, post-licence grant, to ensure effective monitoring and raise suppliers’ standards around financial resilience and customer service on an enduring basis.

### Options for reform

7.7. In this section, we set out a range of different options. These are our initial thoughts and we welcome views. It might be appropriate to adopt a combination of the different measures.

7.8. Table 2 below sets out a summary of the different approaches and we provide some additional commentary on the potential advantages and disadvantages of these options.

**Table 2: High-level options for ongoing requirements**

Type of requirement	Description
Cyclical	<p>Require all suppliers to submit annual/periodic information to Ofgem.</p> <p><i>Cyclical reporting requirements should incentivise suppliers to maintain a robust approach to risk management and financial standards.</i></p> <p><i>The information would help to inform our market monitoring across all suppliers, and if reporting raised significant concerns we may want to consider further action or measures.</i></p>



<p>Targeted/strategic</p>	<p>Require suppliers to provide information (eg re-submit resourcing/funding information required at entry) in response to a certain trigger or if a certain condition is met.</p> <p><i>Triggers could be based on customer number thresholds, significant changes to what was expected at entry, and/or change of control.</i></p> <p><i>This could help to pre-empt or mitigate potential risks. If reporting raised concerns we may want to consider further action or measures.</i></p>
<p>Prudential/financial</p>	<p>These type of requirements could include capital adequacy requirements, or new rules/restrictions in respect of credit balances. We would consider the introduction of a range of sanctions that might be imposed if suppliers were not meeting these requirements.</p> <p><i>This type of requirement would seek to reduce the risk/impact of failure. We will look specifically at potential rules and restrictions in respect of credit balances as part of the separate consultation on exit, due the strong connection with reducing the impact of exit on customers and remaining suppliers. See Chapter 8.</i></p>

Cyclical requirements

7.9. This would be a requirement on all suppliers to submit annual (or periodic) information to Ofgem. This should give us better oversight of the market, helping to inform our market monitoring across all suppliers, and be better prepared for any potential exit. Possible requirements include:

- **Certificate of adequacy**<sup>47</sup> – declarations that the supply business is a going concern and has sufficient financial and operational resources to meet its forecast growth/business activities for the next 12 months (or, potentially, 6 monthly). Suppliers would need to declare where there was doubt over their resources, or if they will not have the resources required. These certificates would be signed-off by the director(s)/controller(s), and potentially also audited.
- **Annual viability statement** – a potential expansion of the above, with more detailed information, for example, updated/evaluated risk management strategy, demonstration of ‘severe but plausible’ stress-testing, and/or how the directors assess the ability of the supply business to grow while maintaining service levels. This could cover a period longer than 12 months (if appropriate).

7.10. These types of requirements could promote higher financial and risk management standards, and more effective planning. They would provide a formal checkpoint for dialogue with Ofgem on financial resilience and set a clear expectation that suppliers should report to

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<sup>47</sup> We have similar requirements for network companies; monopoly licensees provide annual declarations in respect of whether they have adequate resources for their activities for the next 12 months.



us in the event of any concerns regarding their resources. Receiving this type of information could help us identify suppliers who are potentially at higher risk earlier.

7.11. We are mindful that this requires regular information from all suppliers in the market, and could be an additional burden for many suppliers. We could consider a risk-based approach, whereby reporting was only required – for example – by suppliers over a certain size. However, we would expect a prudent supplier to be assessing their financial adequacy and viability on a regular basis, therefore the additional burdens for properly prepared and managed suppliers may be limited.

7.12. Reporting requirements alone do have limitations on minimising the impact on consumers of any failure, but they could be used in combination with other potential measures.

7.13. If reporting raised significant concerns we may want to consider further action or measures. Initially any concerns may prompt further engagement with the licensee and closer monitoring. If they are considered at risk, we may consider if there are potential actions we should take to limit any potential consumer detriment, depending on the severity of the situation.

**7.14. Do you consider that suppliers should report on their financial and operational resilience on an ongoing basis? If so, do you have any initial views on the content of these reports/statements?**

Targeted/strategic requirements

7.15. In addition to reporting requirements, we are considering whether to require suppliers to provide information in response to certain triggers or if a certain condition is/is not met. This would represent a more targeted, risk-based approach.

7.16. Possible requirements could include:

- **'Milestone' assessment when supplier expected to reach certain customer threshold** - if a supplier expects to meet a certain customer threshold then they could be required to re-submit information to demonstrate they are financially and operationally able to cope with further growth in customers, and are also aware of changes/additional regulatory obligations. Once a supplier reaches a certain size additional requirements could also potentially be triggered – for example, requirement to appoint a Compliance Officer, and/or requirement to have an 'intervention plan'.<sup>48</sup>
- **Submission of information if growth or certain metrics are materially different to expectations, and/or if there is a change of control** – at entry we are proposing that suppliers set out their plans and resources for the first 12 months. If they are growing more or less quickly than expected, or issues of concern arise from our monitoring activities, we could formally require information and engagement similar to our entry assessment. Similarly, if there was a change of control or other material change in circumstances.

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<sup>48</sup> There are similar requirements under network licences. An intervention plan could be a document/set of documents containing key information to enable efficient management of exit in the event of failure.

7.17. These requirements should provide incentives for suppliers to focus on their capability and ongoing resilience (people, systems, and processes), as well as promoting improvements to their financial and management standards as they grow. In turn this should drive up standards and reduce the risk of exposing consumers and remaining suppliers to the costs of a potential supplier failure.

**7.18. Do you have any initial views on the potential introduction of targeted or strategic monitoring/requirements on active suppliers?**

*Prudential/financial requirements*

7.19. This would represent a more interventionist approach than we currently take to regulating suppliers, with the purpose of limiting the likelihood and/or impact of financial failure. Possible requirements could include:

- **Reporting against a set of metrics** – requiring reporting against a set of ratios or metrics, eg liquidity ratios that indicate financial health, and/or regular reporting of credit balances held.
- **Capital adequacy requirements** – for example, requiring that customer credit balances must never be more than a certain percentage of working capital.
- **Rules/restrictions relating to customer credit balances** – this is discussed in Chapter 8 in the context of supplier exit.

7.20. The introduction of such requirements could reduce the likelihood of a supplier failure, and/or the impact on the wider industry and consumers in the event of failure. We would need to consider the range of sanctions that could be applied if suppliers did not meet these requirements (for example, requiring a supplier to rectify the situation if they did not meet a capital adequacy requirement; with the ultimate sanction being licence revocation).

7.21. We anticipate this option would be resource intensive for Ofgem and we would need to carefully assess the impacts on existing suppliers, and suitable transition arrangements. We consider the issues around credit balances in more detail in Chapter 8.

**7.22. Do you have any initial views on the potential introduction of prudential/financial requirements on active suppliers?**

## **Supplier conduct**

7.23. Our compliance work is focussed on driving improvements in supplier conduct.

7.24. We meet new suppliers once they have entered Controlled Market Entry and are actively acquiring customers. This provides an understanding of the individual business, highlights our expectations to suppliers on delivering for customers across their obligations (including those designed to protect vulnerable customers), and builds an ongoing compliance relationship between the supplier and Ofgem.

7.25. Following this, most suppliers are allocated a dedicated point of contact in Ofgem to act as an 'account manager'. This provides the ability for suppliers to keep us informed of

developments in their business, and for us to raise any early compliance matters with the supplier that we have identified, on an ongoing basis.

7.26. We outlined our overarching approach in our Compliance and Enforcement Report (August 2018)<sup>49</sup>. Alongside the use of data formally reported by suppliers to us, and also from third parties such as Citizens Advice and the Ombudsman, we see self-reporting by suppliers as important. Where they occur, we want suppliers to give us assurance that they have established the scale of a non-compliance issue and why it happened. Suppliers must also show how they are both putting matters right and ensuring that the problem does not recur.

7.27. This approach, combined with tougher entry requirements, should ensure that any new suppliers entering the market provide the levels of service expected to their customers. We have not identified the need for a significant review of this aspect of our compliance work, however we expect it could adapt alongside any new ongoing requirements, outlined above, therefore we will consider this further as appropriate under our next consultation.

## Suitability to hold a licence

7.28. Our proposals for strengthened entry requirements for suppliers include an expanded 'fit and proper' assessment. We already perform checks on individuals named in a licence application. Relevant considerations for our decision to grant the licence include (for example) unspent criminal convictions and director disqualifications. However, no provision currently exists which would enable us to revoke the licence of a participant who – at a later date – no longer conformed with our assessment of suitability to hold a licence.

7.29. We are considering the introduction of an ongoing 'fit and proper' licence requirement, enabling us to reassess this – for example – where there was a material change in circumstances or adverse information was brought to our attention. Introducing a licence condition to that effect would allow us to take enforcement action against any licensee who failed our 'fit and proper' assessment.<sup>50</sup>

7.30. To facilitate this we would also consider whether the licence conditions should include a change of control (and/or director) provision, and whether new licences should be issued with a specific 'fit and proper' revocation clause going forward.

**7.31. Do you consider that Ofgem should introduce an ongoing requirement on suppliers to be 'fit and proper' to hold a licence?**

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<sup>49</sup> <https://www.ofgem.gov.uk/publications-and-updates/retail-supplier-compliance-and-enforcement-report-springsummer-2018>

<sup>50</sup> We will consider how such a new requirement would fit with our existing power to seek a Director Disqualification Order or Competition Disqualification Order where a director does not meet their legal responsibilities.

## 8. Exit arrangements: managing supplier failure

### Section summary

As part of a separate consultation we will look at potential rules and restrictions in respect of credit balances, to ensure appropriate protections are in place in the event of a supplier exit and that remaining suppliers are not asked to bear undue costs.

### Protecting customer account balances

8.1. We consider the proposals to strengthen entry and ongoing requirements on suppliers will reduce the risk of disorderly supplier exits by raising standards around financial resilience. However, it is important that exit remains a feature of the market.

8.2. Therefore, we are also reviewing the arrangements for managing supplier exit. While we have robust and tested arrangements for protecting customers' energy supply and their credit balances in the event of a supplier failure, we are considering whether these arrangements could be improved and that we can ensure the failing supplier takes a greater responsibility for their share of the costs of failure. Specifically, whether new rules or restrictions are needed to further protect consumer credit balances and minimise wider detriment to the market if a supplier fails. These would be ongoing requirements on suppliers, but as such measures could potentially directly minimise the financial and disruptive impacts of a supplier exit, we will consider this issue under a separate consultation specifically related to the arrangements for managing supplier failure and market exit.

8.3. Customers who pay by direct debit, which is almost two-thirds of all customers, typically pay a uniform rate across the year. Many customers are also billed (while the smart meter roll-out continues) using estimates. Also, when customers are setting up direct debit mandates with their supplier, this is sometimes set using estimated consumption data. For all these reasons it is commonplace for customers to have – at various times – either a credit on their account with their supplier (if they have overpaid) or a debit (if they have underpaid).

8.4. There are a number of protections in place under the current licence conditions which are designed to reduce the risk of suppliers systematically maintaining customer accounts in credit where it is not reasonable to do so. For example, suppliers must regularly undertake reviews of direct debit mandates and they have to return credit balances to customers when requested to do so, unless there are reasonable grounds for not doing so. Suppliers must also refund any credit balances to former customers in a timely manner after sending them their final bill. Ofgem is considering introducing a new Guaranteed Standard of Performance which would require suppliers to compensate customers if they did not return any credit balances to former customers within two weeks of receiving their final bill.<sup>51</sup>

8.5. However, under the current regulatory framework, there are no restrictions on how suppliers use any customer account balances which they may hold. In practice, suppliers – to

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<sup>51</sup> <https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-standards-performance-consultation-switching-compensation>

varying degrees – use account balances as part of their working capital. This is not an uncommon practice across different sectors in the economy.

8.6. The current arrangements mean that while consumer credit balances are protected in the event of supplier failure, the costs of honouring these (along with other exit costs) can be passed to other suppliers and ultimately to consumers, through Last Resort Supply Payments.<sup>52</sup> We are considering ways that such costs might be reduced or avoided. It is our view that suppliers should bear their share of the risk of failure.

8.7. As such, we are examining options that would limit the exposure of customers' credit balances to supplier failure. We will assess specific options as part of a separate consultation but invite initial views here.

8.8. The types of options we may consider include:

- imposing maximum limits on credit balances, meaning suppliers would have to more regularly return credit balances;
- restricting suppliers from offering terms which incentivise customers to maintain credit balances;
- restricting suppliers from using credit balances as working capital,<sup>53</sup> for example holding funds in separate ring-fenced accounts (or, requiring suppliers provide security cover for the value of consumer credit balances they expect to hold during the following year);<sup>54</sup>
- reducing the time suppliers have to issue final bills and return credit balances to former customers (noting the link to our recent proposals on switching automatic compensation).<sup>55</sup>

8.9. These types of requirements are more likely to mitigate the impacts of supplier failure, however, we recognise they would mean increased burden particularly for smaller suppliers and we would need to carefully consider impacts on all current suppliers.

8.10. For any new ongoing licence requirements we will consider the implications on existing licence holders and, where new obligations are being imposed, allow sufficient time for suppliers to bring themselves into compliance. We recognise in particular, that if we were to introduce restrictions on use of credit balances there is a risk of unintended consequences and causing suppliers to become financially distressed, exposing consumers to risks. We will publish further analysis and consultation in due course.

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<sup>52</sup> Gas and electricity supply standard licence conditions 9.

<sup>53</sup> Or set limits on the percentage amount of credit balances they can use for this.

<sup>54</sup> Previously gas suppliers were required to provide security cover which could be called on in the event of failure, to cover certain costs incurred by the SoLR. This requirement was however set at zero in 2001, and subsequently removed from the licence conditions as part of the Supply Licence Review (2007).

<sup>55</sup> <https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-standards-performance-consultation-switching-compensation>

## **Other costs of supplier failure**

8.11. There are other costs of supplier failure which may be passed onto remaining suppliers and, ultimately, consumers. For example, if a supplier is unable to meet its obligations under the Renewables Obligation and other Government environmental schemes where shortfalls in funding are mutualised across all suppliers. As set out above, suppliers should bear their share of the risk of failure.

8.12. New ongoing requirements in relation to financial adequacy discussed in Chapter 7 would aim to reduce suppliers' and consumers' exposure to these financial risks. However, we will also consider whether further action is needed to manage these risks, for example in relation to Government renewable schemes.

8.13. There are also a series of protections set across industry codes, principally through credit and collateral requirements, to protect remaining suppliers from the broader trading-related costs of supplier failure. For example, under the Balancing and Settlement Code, suppliers have to post credit which is used to cover any shortfalls in payments if a supplier gets into financial difficulties.

## Appendix 1

### Draft information requirements for supply licence applications

1.1. In line with the approach described in Chapter 5, we have set out below further detail on the information items we envisage new applicants would need to provide. We welcome feedback on this, and any further suggestions of information that may be relevant for us to consider under the stated criteria.

1.2. As our final proposal will take account of responses to this consultation, we have not yet developed detailed draft guidance to support a new approach.

1.3. We will conduct a further consultation on our final proposals, including a draft guidance document outlining details of the information applicants should – at a minimum – provide, and how we will assess this.

#### Criteria 1: Resources

1.4. In order for us to understand an applicant's entry plans, they would be required to provide sufficient information about their proposed business, including the items below. This would provide us with the necessary context within which to interpret the applicant's declared funding/resourcing arrangements, as well as their proposed arrangements for compliance with their customer service obligations.

1.5. Our objective in reviewing this information would be to make an assessment of the applicant's readiness and ability to enter the retail energy market. In particular, that the applicant has appropriate knowledge and awareness of the key costs and risks they will face, has access to the necessary capabilities to be able to provide an acceptable level of service, and can demonstrate adequate funding in the context of their plan.

1.6. As stated in Chapter 5 we would not request full/detailed business proposals or make any assessment or judgement on the longer term prospects of a business. Our assessment would be centred on whether an applicant has made appropriate preparations for market entry and their first 12 months of operation and that their plans are based on relevant/reasonable assumptions. Within this, our expectation of all entrants would be that they can demonstrate they have given due regard to managing their risks.

1.7. It will be necessary for applicants to provide us with financial data in respect of their projections (including how they have given regard to scenarios where their cash flow is put under short term pressure). We would not undertake detailed analysis or 'check their working'. Rather – supported by published guidance – the onus would be on the applicant to demonstrate that they have accounted for key costs and that they have their required funding in place. We would expect applicants to have subjected their finances to sufficient stress-testing, for instance unexpected wholesale price spikes and other volatile costs.

1.8. We propose that applicants also provide a signed declaration of adequacy. It is the responsibility of the directors to properly assess that they have adequate resources, and the signing of such a declaration has potential implications for those individuals if it is later found to be false. We consider it is important to avoid any misconception that applicants may have

about Ofgem ‘approving’ their plans/assessment. Our assessment will be against our defined criteria; we will not provide ‘quality assurance’ in respect of an applicant’s business proposals.

1.9. Potential grounds for refusing a licence under this criteria include that the applicant is unable to demonstrate that they have access to the funding requirements associated with their proposal to enter the supply market; or the applicant is unable to demonstrate sufficient knowledge of the costs of operating in the energy market, or have in place plans to mitigate key risks.

<p><b>Entry proposal</b></p>	<table border="0"> <tr> <td>Corporate structure</td> <td>Timeframe for market entry</td> </tr> <tr> <td>Business functions and how resourced</td> <td>Pricing, tariffs, products</td> </tr> <tr> <td>Outsourced functions</td> <td>Trading strategy</td> </tr> <tr> <td>Target customer base</td> <td>Gross/net profit margin</td> </tr> <tr> <td>Expected rate of growth (including geographic focus)</td> <td>Projected volume of energy to be supplied and purchasing strategy</td> </tr> <tr> <td>Sales &amp; marketing</td> <td>IT systems (billing, CRM) and testing</td> </tr> </table>	Corporate structure	Timeframe for market entry	Business functions and how resourced	Pricing, tariffs, products	Outsourced functions	Trading strategy	Target customer base	Gross/net profit margin	Expected rate of growth (including geographic focus)	Projected volume of energy to be supplied and purchasing strategy	Sales & marketing	IT systems (billing, CRM) and testing
Corporate structure	Timeframe for market entry												
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Target customer base	Gross/net profit margin												
Expected rate of growth (including geographic focus)	Projected volume of energy to be supplied and purchasing strategy												
Sales & marketing	IT systems (billing, CRM) and testing												
<p><b>Source and proof of funds</b></p>	<p>Financial projections (inc monthly cashflow) with narrative on material assumptions and costs, for min. first year’s operation;</p> <p>Risk management strategy (plan to mitigate key financial risks and maintain level of working capital projected under realistic stress scenarios);</p> <p>Signed declaration of financial and operational adequacy for the following 12 months; and</p> <p>Capital structure and working capital arrangements with source and proof of funding for first year, eg:</p> <ul style="list-style-type: none"> <li>• Cash/liquid assets</li> <li>• Debt finance/letter of credit</li> <li>• Parent company guarantee</li> <li>• Declaration from finance backer</li> <li>• Share capital/shareholder agreement</li> <li>• Grants</li> </ul>												



## Criteria 2: Regulatory obligations

1.10. As set out in Chapter 5 and in line with our approach to principles based regulation, we would not prescribe the manner in which a supply entrant must approach compliance with their various obligations. Applicants may choose to attach copies of their relevant compliance plans if available, or alternatively submit a narrative response outlining their compliance strategy and the practical steps they are taking (or intend to take) to ensure compliance in key areas.

1.11. Potential grounds for refusing a licence under this criteria would include if the applicant is unable to demonstrate an awareness and understanding of their customer service obligations under the licence, and/or they have not demonstrated the steps they will take to comply with these obligations.

<b>Statement of intent covering relevant obligations</b>	<ul style="list-style-type: none"> <li>• Sales and marketing</li> <li>• Billing and credit balances</li> <li>• Treating customers fairly                             <ul style="list-style-type: none"> <li>○ How applicant is equipped to service customers</li> <li>○ Complaints approach</li> <li>○ Working with Citizens Advice and Ombudsman</li> <li>○ Managing customers in payment difficult</li> </ul> </li> <li>• Compliance reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Vulnerability                             <ul style="list-style-type: none"> <li>○ Identification and treatment of vulnerable customers</li> </ul> </li> <li>• Retail price protections                             <ul style="list-style-type: none"> <li>○ Safeguard tariff</li> <li>○ Default tariff cap</li> </ul> </li> <li>• Smart metering</li> <li>• PPM</li> <li>• Government schemes</li> </ul>
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## Criteria 3: 'Fit and Proper'

1.12. Our current application process requires applicants to make disclosures in respect of:

- Director disqualifications
- Unspent criminal convictions
- Previous licence applications, revocations or refusals
- Any refusal/revocation/restriction/termination by any other body (Tier 2 only)
- VAT registration

1.13. As part of our current assessment we check for director bankruptcy and insolvency history, although no disclosures on this are presently required.

1.14. Adverse disclosures – or information brought to our attention – in these areas may lead to an application being refused, but we assess this case by case in light of the particular circumstances/merits of the case. We may also refuse to grant a licence where any false or misleading information is given.

1.15. Ofgem is required to assess any licence application in a manner that it considers is best calculated to further its principal objective of protecting the interests of existing and future energy consumers. Wherever appropriate, Ofgem must seek to do this by promoting effective competition in the energy sector. We will not issue a licence to a person if we consider that doing so, it would undermine the interests of current or future energy consumers.

1.16. We state in our guidance that in granting a licence we do not give any warranty or guarantee that the applicant or any related person is 'fit and proper'. We have regard to matters that we consider relevant to our decision to grant a licence, in the context of our licensing regime objectives.

1.17. We propose to strengthen our assessment of an applicant's suitability to hold a licence by adding the following disclosure requirements:

<p><b>Fit and proper (new requirements)</b></p>	<p>In respect of any named person (or person with significant management responsibility or influence):</p> <ul style="list-style-type: none"> <li>• Refusal/revocation/restriction/termination/disciplinary by any other body</li> <li>• Bankruptcy</li> <li>• Insolvency / Debt judgements / CCJ</li> <li>• Previously triggered a SoLR event (including SoLR event which happened within 12 months of a named person's involvement with that company)</li> <li>• Compliance/enforcement history</li> <li>• Adverse findings in civil proceedings</li> </ul>
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## Appendix 2 – 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](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

N/A

#### 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 a period of 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 3<sup>rd</sup> 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](#)”.