

Supplier of Last Resort

Revised guidance

November 2003

Summary

In March 2001 Ofgem published the document 'Supplier of Last Resort (SoLR) – Guidance on current arrangements'. The document set out the issues that Ofgem would need to consider in the event of the failure of a gas or electricity supplier or a gas shipper. The document also explained the position in both gas and electricity before and after the implementation of the Utilities Act 2000 licensing schemes and standard licence conditions.

There have been a number of developments since then that have enabled Ofgem and industry parties to refine the arrangements for dealing with supplier failures. Although Ofgem would always prefer a trade sale as a way of ensuring continuity of supply for a failed supplier's customers, a robust and transparent process for deciding whether, and how, to appoint a Supplier of Last Resort provides more certainty for all parties involved.

This document therefore updates the arrangements based on the current licence conditions and provides enhanced guidance on Ofgem's policies and procedures. In particular, this document provides detailed information about the process Ofgem will follow and the criteria it will use to select and appoint a SoLR. It also provides details about the information that industry parties will be required to give Ofgem as part of that selection process. This will enable them to prepare as much as possible in advance to respond to a supplier failure.

This guidance is issued to help industry parties, their advisors and insolvency practitioners understand Ofgem's current powers, policies and procedures to deal with supplier failure, in particular the circumstances in which it would appoint a Supplier of Last Resort. The guidance cannot take account of unforeseen circumstances that might arise during a particular failure. Such circumstances may necessitate changes (which may be substantial and at short notice) to the policies and procedures in this document.

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1. Rationale

- 1.1. From time to time, companies in competitive markets fail. On the one hand, failure is regrettable, in that investors lose money, jobs are lost and inconvenience is caused to customers. On the other hand, failure can be a sign that competition is working effectively. This is because in many cases it is the degree of rivalry between companies and the extent to which customers exercise choice that inevitably leads to success for some companies and failure for others.
- 1.2. This logic applies as much in relation to the gas and electricity supply markets as it does to other markets. It is therefore inevitable that some gas and electricity suppliers will fail. The difference between gas and electricity and other sectors of the economy is that gas and electricity are services that are generally regarded as essential. This is why it is important that Ofgem, in conjunction with other bodies where appropriate, takes all reasonable steps to address the consequences of gas and electricity suppliers failing. Not every failure will require regulatory intervention – the business may be sold in a trade sale. However, it is for Ofgem to take all reasonable steps within its available powers to secure continuity of supply for all customers.
- 1.3. In March 2001 Ofgem published guidance¹ on:
 - ◆ the actions Ofgem takes when licensed electricity suppliers, licensed gas suppliers and licensed gas shippers fail
 - ◆ the circumstances in which Ofgem is likely to revoke a supply licence, and
 - ◆ the steps Ofgem would expect to take to select another supplier to take over responsibility for the failed suppliers' customers (the Supplier of Last Resort ("SoLR")).
- 1.4. Since that document was published there have been a number of developments:

- ◆ in October 2001, as a result of changes introduced under the Utilities Act 2000 (“the Utilities Act”), the terms of suppliers’ and shippers’ licences were amended to enable Ofgem to revoke them in not less than 24 hours in circumstances where the licensee becomes insolvent. The Utilities Act also introduced the ability for Ofgem to appoint a SoLR for all types of customer (domestic and non-domestic)
- ◆ in December 2001 the gas and electricity supplier Enron Direct Limited failed. Its customers were bought by BGT
- ◆ in September 2002 an exercise to test the process for selecting and appointing an SoLR was carried out by Ofgem and industry participants²
- ◆ in October 2002 TXU Europe’s supply business was sold to Powergen following TXU’s financial difficulties, and
- ◆ in June 2003 Maverick Energy Limited (a small non-domestic electricity supplier) went into administrative receivership; its customer contracts were subsequently sold to Atlantic Electricity and Gas Limited.

- 1.5. These events have enabled Ofgem to test and refine its procedures for dealing with failures. This document provides up to date guidance on the current arrangements for dealing with a supplier failure.
- 1.6. There is no statutory or licence provision for Ofgem to appoint a “Shipper of Last Resort” if a shipper fails (whether or not its supplier remains solvent). This document does not, therefore, consider in any detail what happens when a shipper fails but its supplier remains solvent. Any SoLR supplying gas customers would always have to have its own shipper.
- 1.7. Ofgem considers that trade sales are generally more desirable than regulatory intervention. However the current regulatory regime gives Ofgem some discretion as to when it revokes a licence, and how it selects and appoints a SoLR. Amongst other things, this can make it difficult for those contemplating purchasing a failing business to commit finance because they may not be sure whether or not the regulator is likely to revoke the supplier’s licence. The further

¹ Supplier of last resort: Guidance on current arrangements. Ofgem March 2001 27/01

² Details of the exercise and the lessons learned from it can be found at:
<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/supplyshipperfailure>
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clarity provided by this document about Ofgem's role in the event of a supplier failure should help facilitate trade sales. It will also help potential SoLRs and other industry parties ensure that they have procedures in place to deal with their responsibilities in the event of a supplier failure.

- 1.8. Since the implementation of the Utilities Act 2000 licensing schemes and standard licence conditions in October 2001, Ofgem has had the power to appoint a SoLR for all customers – domestic and non-domestic. This power is essential to ensure that all a failed supplier's customers have continuity of supply. Appointing a SoLR only for domestic customers would leave other customers without a supplier and at risk of possible disconnection. It could also expose other industry parties to bad debt as customers continued to use electricity or gas for which the failed supplier was not paying.
- 1.9. **This guidance is issued to help industry parties, their advisors and insolvency practitioners understand Ofgem's current powers, policies and procedures to deal with supplier failure, in particular the circumstances in which it would appoint a SoLR. The guidance cannot take account of unforeseen circumstances that might arise during a particular failure. Such circumstances may necessitate changes (which may be substantial and at short notice) to the policies and procedures in this document.**

Structure of this document

- 1.10. The rest of this document is structured in the following way:
- ◆ Chapter 2 explains the legal and regulatory framework relevant to the appointment of a SoLR
 - ◆ Chapter 3 explains Ofgem's arrangements for dealing with supplier failures
 - ◆ Chapter 4 reviews other issues that have been raised about supplier failures including what happens if a shipper fails but not the supplier, and

- ◆ the appendices provide details of the information that Ofgem is likely to request from various industry parties. It also gives details of the selection criteria that Ofgem is likely to use when selecting a SoLR.

1.11. Although this document is not a formal consultation, Ofgem welcomes views on any aspects of it. Comments should be sent to:

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1.12. It is open to respondents to mark all or part of their response as confidential. However, we would prefer, as far as possible, that responses are made available in the Ofgem library, and on our website (www.ofgem.gov.uk).

2. Background

- 2.1. Ofgem's principal objective is to protect the interests of consumers, wherever appropriate by promoting effective competition. In the event of a supplier failure, Ofgem's priority is to ensure that all customers continue to receive supplies of gas and/or electricity.
- 2.2. This chapter explains the legal and regulatory framework relevant to the appointment of a SoLR. It covers briefly the circumstances under which Ofgem may:
- ◆ grant a licence
 - ◆ revoke a licence, and
 - ◆ appoint a SoLR.

Granting licences

- 2.3. Ofgem assesses applications for licences for a number of activities including the supply of gas and electricity. Ofgem does not consider that any check it could perform on a potential licensee at the time its application is being considered will provide continuing comfort about its financial viability once the licensee commences operations. Reflecting this, in March 2003 the Gas and Electricity Markets Authority ("the Authority") made new licence Application Regulations³ which removed the requirement for a licence applicant to provide detailed business plans.

³ The Gas (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003 SI 2003 No 847 and The Electricity (Applications for Licences and Extensions and Restrictions of Licences) (Amendment) Regulations 2003 SI 2003 No 848
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Licence revocation

2.4. Ofgem can revoke a gas or electricity supplier's licence in not less than 24 hours in certain circumstances. For the purposes of this document, the relevant terms for revocation of a supplier's licence⁴ include when the supplier:

- "is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986⁵) or any voluntary arrangement is proposed in relation to it under Section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority); or
- has a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
- has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it; or
- passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
- becomes subject to an order by the High Court for winding-up."

Circumstances where Ofgem would consider revoking a supply licence

2.5. Ofgem considers that trade sales are generally more desirable than regulatory intervention. However the current regulatory regime gives Ofgem some discretion as to when it revokes a licence, and how it selects and appoints a SoLR.

⁴ Contained in Schedule 2 to the licence

⁵The terms state that section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time determine by notice in writing to the licensee. The licensee shall not be deemed to be unable to pay its debts if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any revocation notice.

2.6. In deciding whether or not to revoke a supplier's licence Ofgem is likely to take into account (but would not necessarily be limited to) the following issues:

- ◆ Payment of post-receivership charges by the receiver⁶

Although Ofgem's preference is for a trade sale, it does not consider that it is acceptable for a receiver to continue to supply gas or electricity without agreeing to pay the appropriate energy balancing and network charges. If a receiver agrees to pay the post-receivership charges it is likely that Ofgem would consider that he should be given some time to sell the company's assets in a trade sale. If the receiver does not agree to pay these post-receivership debts then Ofgem would consider the balance between the interests of the failed supplier's customers against the risk to other industry parties (and, ultimately, all other customers) of exposure to the increasing bad debt of the failed supplier by smearing or pass through.

- ◆ Potential SoLRs

Before deciding to revoke a licence and appoint a SoLR, Ofgem must be satisfied about the ability of potential SoLRs to supply the failed supplier's customers without significantly prejudicing their ability to continue to supply their existing customers. It does this by asking other suppliers a series of detailed questions about how they would deal with various aspects of being a SoLR.

- ◆ Whether the supplier is "unable to pay its debts"

Ofgem cannot consider whether a supplier is "unable to pay its debts", nor can it pre-empt the outcome of a resolution for winding up. Both these issues are matters that must be decided by a court. In these circumstances Ofgem would wait until a court has made a decision before deciding whether to revoke a licence. For instance, if a creditor issues a Statutory Demand on a supplier, Ofgem will wait for the 21 day period allowed to satisfy the demand and until a court has decided that the demand is valid before considering whether the supplier's licence should be revoked.

Revocation procedure

- 2.7. The timescale for deciding whether to revoke a licence will depend on the circumstances of the failure. Ofgem will take all reasonable steps to contact the relevant person at the supply business, whether that is a director or a receiver. This will enable Ofgem to raise and clarify any concerns it has and to explain the regulatory position and its powers.
- 2.8. This contact will also provide the director or receiver with the opportunity to provide reasons why its licence should not be revoked. Ofgem would make clear the timescale for making such representations. This will depend on the urgency of the situation and in particular the impact on customers and other industry parties of delaying any decision to allow time for further representations or for alternative solutions to the licensee's problems to be found.
- 2.9. Ofgem expects directors and receivers to make it a priority to respond to any requests by Ofgem for a meeting.
- 2.10. Ofgem must publish reasons for revoking a licence. Once it has decided to revoke, it will therefore issue a Notice of revocation and, simultaneously, a Notice giving reasons⁷.

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- 2.11. Any gas or electricity supply licensee can be directed by Ofgem take over responsibility for a failed supplier's customers (ie to be a SoLR). In considering which supplier to direct Ofgem must be satisfied that:
- ◆ circumstances have arisen which would entitle Ofgem to revoke the failed supplier's licence, and
 - ◆ the SoLR could supply the additional customers without significantly prejudicing its ability to continue to supply its own customers and to fulfil its contractual obligations for the supply of gas or electricity⁸.

⁶ For the purposes of this document the term "receiver" is used to mean any insolvency office holder.

⁷ Confidential material is likely to be contained in a separate annex sent only to the licensee.

⁸ Gas and electricity supply licences - Standard Condition 29(2): Supplier of Last Resort

2.12. Chapter 3 describes in detail the arrangements that Ofgem has put in place to decide whether these conditions have been met.

3. Arrangements for dealing with supplier failures

3.1. This chapter describes the arrangements that Ofgem has put in place to enable it to decide which supplier to direct to become a SoLR if it decides to revoke a failing supplier's licence. The arrangements include:

- ◆ getting information from a variety of sources about the failing supplier's portfolio
- ◆ discussions with any receiver appointed to the failing company
- ◆ providing information about the failing supplier's portfolio to potential SoLRs and getting information from them about how they could take over responsibility for customers, and
- ◆ deciding which supplier to appoint as a SoLR if Ofgem decides to revoke the failing supplier's licence.

Information about the failing supplier's portfolio

3.2. Good quality information about a failing supplier's portfolio enables potential SoLRs to assess the impact on their existing business of supplying additional customers. It also enables a SoLR to provide a better service to those customers, particularly if customer names and billing addresses are available. Ofgem will therefore use its powers to obtain information about the failing supplier's portfolio and customers. Some information about customers can be obtained from Transco and distribution companies, however they do not have customer billing details. If poor quality systems have been one of the factors in the supplier's failure, customer billing information may be limited.

3.3. Ofgem will consider carefully when it is appropriate to serve information requests on the failing supplier and network operators. Where possible and appropriate in the circumstances, this will be done before the supplier goes into receivership. This will enable Ofgem to move quickly to the next stage of its

procedures (requesting information from potential SoLRs) if and when it is appropriate to do so.

- 3.4. Some high level aggregated portfolio information will be provided to potential SoLRs to enable them to assess their ability to supply the additional customers. Actual customer details (where these are available) will only be released by Ofgem to a SoLR when it has been appointed. The information provided to potential SoLRs is covered by the provisions of the Utilities Act s105(1). This restricts further disclosure of the information.

Information from Transco, distribution companies and Elexon

- 3.5. Transco can provide information about a gas supplier's portfolio by:
- ◆ Local Distribution Zone (LDZ), and
 - ◆ whether the meter is registered as domestic or non-domestic.
- 3.6. An example of the type of information that would be requested is at Appendix 2.
- 3.7. Distribution Companies will be asked for details of three main customer groups in each Grid Supply Point Group (GSPG), identified by their profile/measurement class:
- ◆ domestic (ie profile classes 1 and 2)
 - ◆ non-domestic non half hourly (NHH) (ie profile classes 3 - 8), and
 - ◆ Half Hourly (HH) (ie profile class 00).
- 3.8. An example of the type of information that would be requested from Distribution Companies is at Appendix 3.
- 3.9. Elexon will be asked for information about:
- ◆ the Balancing Mechanism (BM) Units registered to the failing supplier
 - ◆ metered volumes, showing the total volumes, by settlement period, consumed in the previous week by the failing Supplier ID in each GSP Group, and

- ◆ HH and NHH volumes, showing the total volumes, by settlement date, consumed in the previous week by the failing Supplier ID in each GSP Group, split by HH and NHH customers.

Information from the failing supplier

- 3.10. Although network operators and Elexon have information about a supplier's meters, volumes used and site addresses they do not hold customer billing details. Ofgem will therefore ask the failing supplier for information about its portfolio and for details of its customers. An example of the type of information that would be requested is at Appendix 1.

Discussions with the receiver

- 3.11. Ofgem will seek an urgent meeting with any actual or prospective receiver to discuss his intentions and explain Ofgem's role and powers, particularly its ability to revoke a licence and appoint a SoLR. Ofgem would seek the receiver's agreement to pay those post-receivership costs that could otherwise be incurred by other industry parties and/or customers (for example, through smearing or pass through). If the receiver agrees, it is likely that Ofgem would consider that some time should be given to finalise a trade sale. If there is no agreement to pay these costs, other industry parties are exposed to the failed supplier's bad debt once any credit cover has been utilised. In these circumstances Ofgem will consider whether it is appropriate to move to the next stage of the SoLR arrangements – getting information from potential SoLRs about their ability to supply the failed supplier's customers. This does not indicate that the failed supplier's licence will be revoked. It is a prudent measure by Ofgem to ensure that if revocation and the appointment of a SoLR becomes necessary it can be done as quickly as possible.

Information from potential SoLRs

- 3.12. Ofgem would always prefer to be able to appoint a SoLR that had consented to the role. However if no suitable supplier wants to be a SoLR Ofgem will consider using its powers to direct a supplier without its consent. Ofgem will

therefore send high level, aggregated information about the failed supplier's portfolio to those licensees that it considers are most likely to be able to fulfil the role of SoLR, whether voluntarily or otherwise. In the current market circumstances these are likely to include:

- ◆ British Gas Trading
- ◆ London Energy
- ◆ npower
- ◆ Powergen
- ◆ Scottish and Southern Energy, and
- ◆ Scottish Power.

In some circumstances there may be other licensees who could be considered as a potential SoLR. Ofgem will decide, depending on the circumstances of the supplier failure, which licensees to approach.

- 3.13. Ofgem will require potential SoLRs to provide information about a number of issues which would affect their ability to supply the failed supplier's customers. This section summarises the information required; full details are at Appendix 4.

Ability to provide gas and electricity

- 3.14. In appointing a SoLR Ofgem has to consider whether the supplier could carry out the role without significantly prejudicing its ability to supply its own customers and fulfil its contractual obligations for the supply of gas and electricity⁹. Ofgem will therefore ask potential SoLRs to say how they will continue to provide gas and/or electricity to their own customers while also supplying the failed supplier's customers.

⁹ Gas and electricity supply licences - Standard Condition 29(2): Supplier of Last Resort
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Industry processes

- 3.15. Ofgem wants to keep to a minimum the disruption to the failed supplier's customers. It will therefore need information to allow it to judge how the SoLR will operate various industry processes and agreements. Potential SoLRs will be asked how they will manage the change of supplier process so that customers are transferred as quickly as possible from the failed supplier to the SoLR.
- 3.16. In addition, potential SoLRs will be asked for information about how they (or their gas shipper) will maintain adequate current and increased credit cover under existing industry agreements.

Customers

- 3.17. The provision of information to the failed supplier's customers will be a very important part of the SoLR's role. Potential SoLRs will be asked how they will:
- ◆ tell customers about what has happened
 - ◆ deal with written and telephone enquiries from the failed supplier's customers
 - ◆ ensure that each new customer receives a timely and accurate bill, and
 - ◆ ensure that arrangements are in place to enable customers to move onto a contract with the SoLR or to move from the SoLR to a contract with the supplier of their choice.

Deemed contracts

- 3.18. If a supplier provides information on the above criteria that indicates that it would be able to perform the role of SoLR, Ofgem will then consider the deemed contract prices for each potential SoLR.
- 3.19. Ofgem does not consider that the failed supplier's customers (whether domestic or non-domestic) should be protected from all price increases. Once appointed, a SoLR will be able to charge the failed supplier's customers on the basis of its deemed contract rate. This will cover the period from appointment until

customers have agreed a replacement contract rate with the SoLR or another supplier of their choice, or the six month period of SoLR appointment expires, whichever is earlier. Ofgem will consider the SoLR's deemed contract prices in terms of what is best overall for the customer groups involved.

- 3.20. Ofgem considers that it is important that the failed supplier's customers can switch to an alternative supplier if they wish to. A SoLR's deemed contract must allow for termination when the customer takes supply from another supplier¹⁰. Ofgem will therefore ask for confirmation from potential SoLRs that their deemed contracts comply with this requirement.

Levy

- 3.21. The role of SoLR represents a significant logistical challenge to a supplier. It is likely to incur increased administration costs and will have to implement additional energy purchasing arrangements. These will have to be activated and managed within a very short period of time. But there are potentially valuable commercial benefits to a SoLR. It will not have the normal acquisition costs (for example paying commission to doorstep sales agents) and will have the opportunity to convert the customers it has acquired as a SoLR to normal contracts.
- 3.22. Electricity and gas suppliers' licences permit them (in some circumstances) to make a claim for the otherwise unrecoverable costs that they have incurred in being a SoLR¹¹. This would be paid by a "levy" on gas transporters' and electricity distributors' use of system charges.
- 3.23. Ofgem would prefer a SoLR not to make a claim on the levy arrangements for costs it has incurred carrying out its role. A SoLR should set its charges for customers at a level that reflects the supplier's fair assessment of the expected costs involved in supplying those customers. It would not be appropriate for the customers of a failed supplier to be charged less than the actual cost of supplying them with the difference being funded by all other customers through the levy arrangements.

¹⁰ Gas and electricity supply licences - Standard Condition 29(15)(b): Supplier of Last Resort

¹¹ Gas and electricity supply licences - Standard Condition 29A: Supplier of Last Resort Supply Payments
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3.24. However Ofgem recognises that the circumstances of supplier failures are different and that there may be some instances when a SoLR incurs unrecoverable costs. An efficient SoLR should be able to minimise these costs. Ofgem will decide on a case by case basis whether, and in what circumstances, it might be appropriate for a SoLR to make a claim on the levy. In coming to a decision Ofgem will consider issues such as the number of customers and their total consumption of gas/electricity, whether customer details are available (either from the failed supplier or a third party) and whether it would be in customers' best interests to appoint more than one SoLR. The policy for any particular failure will be included with the guidance issued when information requests are sent to potential SoLRs as part of the selection process. This will enable potential SoLRs to factor into their responses to Ofgem how the stated policy on the levy might affect them.

Timescales

3.25. Ofgem's initial guidance indicated that it was likely to allow potential SoLRs between four to six hours to provide all the information requested. Following the test exercise in September 2002, participants indicated that they would have welcomed more time to analyse the portfolio information and provide responses. In particular if a large supplier failed most companies would require Board level approval for their response. Ofgem wants to try to ensure that all potential SoLRs can comply with the information request. There is a considerable amount of information that suppliers can prepare in advance of an actual failure which would ensure that, when the SoLR selection process starts, more time can be spent on key decisions. However Ofgem will, in considering what response time is appropriate, take into consideration the size of the failing supplier and the nature of the failure as well as the need to protect customers and minimise the impact of the failure on other industry parties.

3.26. The provision of information by potential SoLRs is a licence obligation. Ofgem believes that potential SoLRs will take seriously their obligations to respond adequately. A potential SoLR that fails to provide the information required may still be considered as a SoLR. Ofgem will also consider whether it should take enforcement action if a licensee fails to respond properly to the information request.

Assessment of information

- 3.27. Ofgem's criteria for assessing the information provided by potential SoLRs are set out in Appendix 5. Ofgem will set up a Panel of staff to assess the information provided against its criteria. The Panel may need to contact suppliers to clarify individual responses and, if necessary, discuss certain aspects of the responses, particularly the interaction of deemed contract prices and the potential for any claim on the levy arrangements.

Appointment

- 3.28. Ofgem would prefer to appoint one SoLR for all the failed supplier's gas customers and one SoLR for its electricity customers. (This may be the same SoLR.) One SoLR would make it easier for customers to know who their new supplier was. In addition, system constraints in gas mean that the operation of more than one SoLR would be difficult and Ofgem has therefore previously urged the gas industry to develop arrangements to deal with this scenario¹². However there may be circumstances where the portfolio has to be split. In gas, Transco's systems allow the portfolio to be split by domestic/non-domestic customers. In electricity the portfolio can be split by GSP Group.

¹² Ofgem's decision letter "Modification Proposal 0580 'Responsibilities following the Appointment of a Supplier of Last Resort'" 28 January 2003

4. Other issues

Shippers

Suppliers' undertakings to gas transporters¹³

- 4.1. There is no statutory or licence provision for Ofgem to appoint a "Shipper of Last Resort" if a shipper fails (whether or not its supplier remains solvent). All suppliers must give a deed of undertaking to its relevant transporter (normally Transco but other gas transporters should be given similar undertakings) as soon as reasonably practical within one month of being granted a licence. The deed's terms state that if the arrangements between the supplier's shipper and the transporter end and no arrangements with another shipper are put in place then (after notice from the transporter) the supplier will be responsible to the transporter for the charges that the shipper would otherwise have paid. This includes transportation charges and charges for gas.
- 4.2. The gas supplier must use its best endeavours to get another shipper within 35 days.

Obligations on shippers

- 4.3. When a SoLR is appointed, any gas shipper that shipped gas to a failed supplier's customers must comply with any relevant directions given by Ofgem to facilitate the SoLR supplying gas or to make arrangements with the SoLR's shipper to convey gas to premises¹⁴.

¹³ Gas Suppliers Licence Standard Condition 22B(10); Undertaking to be given [...] to a relevant transporter in respect of shipping charges etc

¹⁴ Gas Shippers Licence Standard Condition 12: Provisions relating to continuity of supply
Supplier of Last Resort – Revised Guidance
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What happens after SoLR appointment

- 4.4. This section covers a number of issues that industry parties have raised about what happens during and after a SoLR is appointed.

Revocation date, appointment date and duration of direction

- 4.5. The revocation and the effective date of appointment of the SoLR will always coincide. For operational reasons relating to the respective industry settlement systems this is likely to be at 00:01 for electricity and 06:00 for gas.
- 4.6. The direction to be a SoLR cannot last longer than 6 months¹⁵. After that time the SoLR remains the supplier for any customers with which it has deemed or other contracts. However after the direction ceases to have effect the SoLR's deemed contract price must revert to its normal rate.

Transfer to a SoLR

- 4.7. It is for the SoLR (and its shipper), in conjunction with other industry parties (eg Transco, Elexon, Distribution Companies), to decide the best way to transfer customers to its portfolio. In the case of a large supplier failing this may take some time due to system constraints in the transfer process.
- 4.8. Nevertheless, the SoLR has a deemed contract with each of the failed supplier's customers and is therefore able to charge them for the gas or electricity they use prior to actual transfer to the SoLR. When determining the amount of gas or electricity a customer has used, a SoLR must act on a reasonable basis, taking into account available consumption data for the premises in question and other relevant factors¹⁶.

Obligations on the gas and electricity SoLR

*Notice to customers*¹⁷

- 4.9. Within two working days of appointment the SoLR must send Ofgem a draft notice that it proposes to send to customers telling them that:

¹⁵ Gas and electricity supply licences Standard Condition 29(3): Supplier of Last Resort

¹⁶ Gas and electricity supply licences Standard Condition 28: Deemed Contracts

¹⁷ Gas and electricity supply licences Standard Condition 29(6), (7), (8) and (12): Supplier of Last Resort
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- ◆ the failed supplier is no longer supplying them
 - ◆ the SoLR is their supplier from the date of the direction, and
 - ◆ the charges payable and how those charges are determined.
- 4.10. Ofgem must approve the notice (except for the level of charges or how they have been determined). The notice must be sent to all premises for which the SoLR has become the supplier as soon as reasonably practicable after Ofgem has approved it.
- 4.11. Unless Ofgem agrees otherwise, the SoLR must give five days' notice of any increase in charges. If Ofgem decides that the proposed increase would be likely to cause hardship to domestic customers it may direct the licensee not to charge more than a certain amount. However Ofgem does not consider that customers should necessarily be protected from any increase in prices as a result of their previous supplier failing.

Meter readings

- 4.12. The SoLR must use its reasonable endeavours to secure a meter reading from the failed supplier's former customers within 14 days except in the following circumstances¹⁸:
- ◆ if Ofgem accepts that it would not be feasible or economic to do so, or
 - ◆ if it meant entering the customer's premises without their consent or trying to get entry on more than one occasion.
- 4.13. In practice, Ofgem and energywatch are likely to have advised customers through the media to take a meter reading. In deciding whether it would be feasible for the supplier to obtain meter readings in the time specified Ofgem will consider, amongst other things, the size of the failed supplier's portfolio and the availability of customer addresses.

¹⁸Gas and electricity supply licences Standard Condition 29(9) and 29(10): Supplier of Last Resort
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Appendix 1 - Information from a failing supplier

- 1.1 This Appendix sets out the information that Ofgem is likely to request from a failing supplier. **The information requested may vary depending on circumstances of the failure – this is therefore provided for guidance only.**

GAS

Part A (non-domestic supply points)

1. Total number of non-domestic supply points supplied by the licensee.
2. Number of non-domestic supply points in each Transco Local Distribution Zone (LDZ) and Exit Zone, in the format attached at [...], showing separately the number of Daily Metered & Interruptible sites.
3. Number of non-domestic supply points supplied via each non-Transco gas transporter.
4. Details of any unique sites supplied, including site address, billing address and emergency contact details.
5. Number of non-domestic supply points in the process of registration.
6. Number of non-domestic supply points in the process of transferring away.

Part B (domestic supply points)

1. Total number of domestic supply points supplied by the licensee.
2. Number of domestic supply points in each Transco Local Distribution Zone (LDZ) and Exit Zone, in the format attached at [...].
3. Number of domestic supply points supplied via each non-Transco gas transporter.
4. Number of domestic supply points in the process of registration.
5. Number of domestic supply points in the process of transferring away.

Part C (customer details)

Non-domestic supply points

1. Non-domestic supply point portfolio report by Meter Point Registration Number (MPRN) detailing LDZ and Exit Zone, or CSEP and name of licensed gas transporter in the case of non-Transco gas transporters, customer name, billing address, site address, Annual Quantity (AQ), emergency contact details, details of whether the MPRN is Daily Metered (DM) or Interruptible, and the names of any companies that are supplying customers in the portfolio as an agent to the licensee for the supply of gas supply licence, in the format attached at [...].

Domestic supply points

2. Domestic supply point portfolio report by Meter Point Registration Number (MPRN) detailing LDZ, Exit Zone, or CSEP and name of licensed gas transporter in the case of non-Transco gas transporters, customer name, billing address, site address, Annual Quantity (AQ), Special End User Contact Details (SEUC), details of whether the MPRN is a Prepayment Meter (PPM), and the names of any

companies that are supplying customers in the portfolio as an agent to the licensee for the supply of gas, in the format attached at [...].

3. A copy of the Licensee's Priority Service Register.

ELECTRICITY

Part A (non-domestic supply points)

1. For non-domestic supply points registered in Supply Metering Registration Service (SMRS), provide the following data items. These should be reported a) at the close of business on the day before the date of the report, b) in relation to the Meter Point Administration Number (MPANs) registered to the Licensee and c) including MPANs in the course of registration to the Licensee but excluding MPANs in the course of registration away from the Licensee:
 - (a) the total number of non-domestic MPANs registered to the Licensee;
 - (b) in relation to each Grid Supply Point Group (GSPG) in England and Wales or Bulk Supply Point (BSP) in Scotland comprised in the format attached at [...]:
 - (i) the total number of non-domestic non-half-hourly MPANs registered to the Licensee;
 - (ii) the total number of non-domestic half-hourly metered MPANs registered to the Licensee; and
 - (iii) the total number of non-domestic non-half-hourly meter MPANs registered to the Licensee classified by profile class.
2. For each non-domestic half-hourly MPAN in Profile classes 5 to 8 registered to the Licensee, the registered maximum demand figure.
3. Details of any non-domestic BM Units which have customers demand no based in England and Wales or Scotland.

Part B (domestic supply points)

1. For domestic supply points registered in Supply Metering Registration Service (SMRS), provide the following data items. These should be reported a) at the close of business on the day before the date of the report, b) in relation to the Meter Point Administration Number (MPANs) registered to the Licensee and c) including MPANs in the course of registration to the Licensee but excluding MPANs in the course of registration away from the Licensee:
 - (a) the total number of domestic MPANs registered to the Licensee;
 - (b) in relation to each Grid Supply Point Group (GSPG) in England and Wales or Bulk Supply Point (BSP) in Scotland comprised in the format attached at [...]:
 - i) the total number of domestic non-half-hourly MPANs registered to the Licensee; and
 - ii) the total number of domestic non-half-hourly meter MPANs registered to the Licensee classified by profile class.

2. Details of any domestic BM Units which have customer demand not based in England and Wales or Scotland.

Part C (customer information)

Non-domestic supply points

1. For each MPAN referred to in Part A (non-domestic supply points) paragraphs 1(b)(i) and 1(b)(ii) above, specified by reference to each MPAN and comprised in the format attached at [...]:
 - (a) Grid Supply Point Group (GSPG) in England and Wales or Bulk Supply Point (BSP) in Scotland;
 - (b) Customer name;
 - (c) Billing address;
 - (d) Site address;
 - (e) The Estimated Annual Consumption (EAC) figure;
 - (f) The Last Annualised Advance figure;
 - (g) Name of any company acting as agent to the Licensee for the supply of electricity.

Domestic supply points

2. For each MPAN referred to in Part B (domestic supply points) paragraphs 1(b)(i) and 1(b)(ii) above, specified by reference to each MPAN and comprised in the format attached at [...]:
 - (a) Grid Supply Point Group (GSPG) in England and Wales or Bulk Supply Point (BSP) in Scotland;
 - (b) Customer name;
 - (c) Billing address;
 - (d) Site address;
 - (e) The Estimated Annual Consumption (EAC) figure;
 - (f) Meter type (Prepayment or Credit); and
 - (g) Name of any company acting as agent to the Licensee for the supply of electricity.
3. A copy of the Licensee's Priority Service Register.

Part D (embedded generation)

1. Give details, including MPANs, contact names / telephone numbers and site addresses (where relevant) of any unlicensed generation held in the SVA system.

Appendix 2 – Information from Transco

- 2.1 This Appendix sets out the information that Ofgem is likely to request from Transco. **The information requested may vary depending on circumstances of the failure – this is therefore provided for guidance only.**

Part A - Portfolio Overview

1. The names of gas supply licensees to whom the shipper provides a gas shipping service.
2. For each licensed gas supplier given in (1) above, the total number of supply points in the portfolio.
3. Spread of sites geographically by gas shipper, gas supplier, Local Distribution Zone (LDZ) and Exit Zone in the format attached at [...] showing separately the number of domestic supply points, the number of non-domestic supply points, the number of supply points for which there is no 'D' or 'I' indicator on Transco's system, and the sum of Annual Quantities (AQs) for each category.
4. Number of sites in the process of registration.
5. Number of sites in the process of transferring away.

Part B – Portfolio Supply Point Information

1. In the format attached at [...], provide:
 - i) Meter Point Reference Numbers (MPRN) of all premises supplied;
 - ii) Name of the supplier recorded against each MPRN;
 - iii) Full site address including postcode, Local Distribution Zone (LDZ) and Exit Zone for each MPRN;
 - iv) Annual Quantity (AQ) for each MPRN;
 - v) For each MPRN, an indication of whether the meter is a credit or prepayment meter;
 - vi) An indication of whether the MPRN is deemed on Transco's systems to be domestic and populated on Transco's systems with the 'D' flag, non-domestic and populated on Transco's systems with the 'I' flag, or domestic due to there being no 'D' or 'I' flag on Transco's systems;
 - vii) Gnt code of each MPRN;
 - viii) Meter link code of each MPRN; and
 - ix) Confirmation of whether the supply point is live or isolated.

Part C – Connected System Exit Point (CSEP) Information

1. Count and location by Local Distribution Zone (LDZ) of CSEPs through which shipping activity is provided.

Appendix 3 – Information from Distribution Companies

- 3.1 This Appendix sets out the information that Ofgem is likely to request from Distribution Companies. **The information requested may vary depending on circumstances of the failure – this is therefore provided for guidance only.**

Schedule

The following information, held by the Metering Point Administration Service established and operated by or on behalf of the Licensee at the close of business on the last working day before the date of the report for the Metering Point Administration Numbers (MPANs) registered to the following electricity supply licensee(s):

Name of Supplier	Company Registered Number

1. Total number of MPANs in the portfolio split by Profile Class, Measurement Class and Grid Supply Point Group (GSPG) in England and Wales or Bulk Supply Point (BSP) in Scotland in the format attached at [...];
2. Total number of Prepayment Meters in the portfolio split by Grid Supply Point Group (GSPG) in England and Wales or Bulk Supply Point (BSP) in Scotland in the format attached at [...]

Appendix 4 – Information from potential SoLRs

- 4.1 This Appendix sets out the information that Ofgem is likely to request from potential SoLRs. **The information requested may vary depending on circumstances of the failure – this is therefore provided for guidance only.**

GAS

Section A: Data protection

1. Provide confirmation that, unless appointed as SoLR to some or all of the customers of **[name of failed company]**, the high-level portfolio information provided with this request will only be used for the purposes of making a decision about whether to volunteer for the role of SoLR and for providing the information requested in this request.
2. If appointed as SoLR to some or all of the customers of **[name of failed company]**, Ofgem will provide to the Licensee any information it has obtained on those individual customers to which the Licensee is appointed as SoLR. Please confirm that, if appointed as SoLR, the Licensee will comply with the data protection principles set out in Schedule 1 of the Data Protection Act 1988, and that the data disclosed by Ofgem will only be used for the purpose of providing information to Ofgem or for the purpose of supplying gas pursuant to a last resort supply direction under standard condition 29 of the gas suppliers licences.

Section B – General information

3. State whether the Licensee wishes to volunteer to be a SoLR for the following customer groups:
 - domestic customers
 - non-domestic customers
4. State the circumstances in which the Licensee would NOT give its consent under Standard Condition 29A(2) that paragraphs 3 to 12 of Standard Condition 29A would not have effect in its licence.

Section C – Industry arrangements

Sourcing gas

5. Give details of the arrangements the Licensee has to source gas to:
 - i) continue to supply its existing customers; and
 - ii) supply the customers of **[name of failed company]**.
6. Give details of the Licensee's shipping arrangements that will enable it to ship gas to customers of **[name of failed company]**.

Network agreements

7. State which gas transporters' Network Codes have been signed by the shipper, and give details of any contraventions of any of these Network Codes during the past 12 months, including whether there have been any failures to pay invoices.

Credit cover

8. Give details of the shipper's current arrangements for complying with energy balancing credit cover by providing the following information:
 - i) type of energy balancing security instrument;
 - ii) energy balancing secured credit limited;
 - iii) current level of energy balancing indebtedness;
 - iv) details of any failure to pay cash call notices received in the past 12 months; and
 - v) details of any failure to pay energy balancing invoice notices received in the past 12 months.
9. Give details of the shipper's current arrangements for complying with transportation credit cover by providing the following information:
 - i) type of transportation security instrument;
 - ii) transportation secured credit limited;
 - iii) current level of transportation indebtedness; and
 - iv) details of any failure to pay transportation invoice notices received in the past 12 months.
10. Explain how the shipper would comply with the credit cover requirements if it had to ship gas to customers of **[name of failed company]**. In particular, give details of how quickly any required additional security could be arranged and put into place, and the type of new security that would be used.

Change of supplier process

11. Give details of the arrangements the Licensee will make to:
 - i) manage the change of supplier process (including confirmation of whether your organisation is able to and would seek to use Transco's bulk transfer system); and
 - ii) obtain meter reads from customers within 14 days of the last resort supply direction taking effect.

Section D – customers

Customer service

12. Explain the arrangements that the Licensee will make to deal with the failed supplier's customers, including:
 - i) how customers will be informed about what has happened;

- ii) how customers' written and telephone enquiries will be dealt with;
- iii) how it will be ensured that customers will receive a timely and accurate bill; and
- iv) how customers will be made aware of their options to sign up to a contract with the Licensee or another supplier

Prepayment meter customers

11. Explain the arrangements that the Licensee will make to deal with the failed supplier's prepayment customers, including:
- i) how arrangements will be made to deal with the provision of new prepayment devices;
 - ii) how arrangements will be made to enable the provision of emergency credit;
 - iii) how arrangements will be made to deal with the switching of customer meters to the Licensee's deemed contract tariff rate for customers whose meter have been programmed to collect a proportion of debt; and
 - iv) provide details of the number and type of PPM customers already supplied by the Licensee.

Standard Condition 32(3)

12. Confirm that if the Licensee is directed to supply gas pursuant to standard condition 29, the Licensee will not refuse to supply gas to domestic customers on either of the grounds set out in sub-paragraphs (c) and (h) of standard condition 32(3).

Section E: Deemed Contracts

Prices

13. Domestic customers
- (a) complete the table below, giving the average GB deemed contract price for each group if directed to supply gas pursuant to standard condition 29 for a domestic gas customer with average consumption as defined on the energywatch pricing factsheets (19,050 kWh per annum for gas customers).
(NB – Complete all un-hashed cells. All prices must include VAT)

	DOMESTIC CUSTOMERS – AVERAGE PRICE					
	Standard Credit		Direct Debit		PPM	
	p/kWh	Standing charge (pa)	p/kWh	Standing charge (pa)	p/kWh	Standing charge (pa)
No Levy claim						
Levy claim						

- (b) If the Licensee's deemed contract prices as a SoLR for domestic customers differ from its normal deemed contract prices explain the reasons for the different pricing structures.

14. Non-Domestic customers

- (a) complete the table below, giving the preferred number and the maximum number of customers in each group and the average GB deemed contract price for each group if directed to supply gas pursuant to standard condition 29 for a non-domestic gas customer.

(NB – Complete all un-hashed cells. All prices must include VAT)

		NON-DOMESTIC CUSTOMERS – AVERAGE PRICE			
		England & Wales		Scotland	
		p/kWh	Standing charge	p/kWh	Standing charge
No Levy claim					
Levy claim					

- (c) If the Licensee's deemed contract prices as a SoLR for non-domestic customers differ from its normal deemed contract prices explain the reasons for the different pricing structures.

Termination terms

17. Provide a copy of the Licensee's deemed contract termination clauses and confirm that the licensee will allow termination on the grounds given in standard licence condition 29 (15) (b).

ELECTRICITY

Section A: Data protection

- Provide confirmation that, unless appointed as Supplier of Last Resort ("SoLR") to some or all of the customers of **[failed supplier]**, the high-level portfolio information provided with this request will only be used for the purposes of making a decision about whether to volunteer for the role of SoLR and for providing the information requested in this request.
- If appointed as SoLR to some or all of the customers of **[failed supplier]**, Ofgem will provide to the Licensee any information it has obtained on those individual customers to which the Licensee is appointed as SoLR. Please confirm that, if appointed as SoLR, the Licensee will comply with the data protection principles set out in Schedule 1 of the Data Protection Act 1988, and that the data disclosed by Ofgem will only be used for the purpose of providing information to Ofgem or for the purpose of supplying electricity pursuant to a last resort supply direction under standard condition 29 of the electricity suppliers licence.

Section B – General information

3. State whether the Licensee wishes to be considered for the role of SoLR for the customers of **[failed supplier]** for the Grid Supply Points Groups (GSPGs) in England and Wales and Bulk Supply Points (BSPs) in Scotland given in the table below:

GSPG/BSP Group	Volunteer SoLR (Yes/No)
Eastern	
East Midlands	
London	
Manweb	
Midlands	
Northern	
Norweb	
Scottish Hydro	
Scottish Power	
Southern	
SEEBOARD	
South Wales	
South West	
Yorkshire	

4. State the circumstances in which the Licensee would NOT give its consent under Standard Condition 29A(2) that paragraphs 3 to 12 of Standard Condition 29A would not have effect in its licence.

Section C - Industry arrangements

Sourcing electricity

5. Give details of the arrangements the Licensee has to source electricity to:
- continue to supply its existing customers; and
 - supply the customers of **[failed supplier]**.

Network agreements

6. State which Distribution Companies the Licensee has entered into Distribution Use of System Agreements with.

Credit cover

7. Give details of the Licensee's current arrangements for complying with the Balancing & Settlement Code credit cover by providing the following information:
- type of security instrument;
 - secured credit limit;

- iii) current level of indebtedness;
 - iv) details of any failures to pay invoices in the part 12 months; and
 - v) explain how the Licensee would comply with the credit cover requirements if it had to supply electricity to customers of [failed supplier's customers]. In particular, give details of how quickly any required additional security could be arranged and put into place, and the type of new security that would be used.
6. Give details of the Licensee's current arrangements for complying with distribution credit cover by providing the following information:
- i) type of security instrument;
 - ii) secured credit limit;
 - iii) current level of indebtedness;
 - iv) details of any failures to pay invoices in the part 12 months; and
 - v) explain how the Licensee would comply with the credit cover requirements if it had to supply electricity to customers of [failed supplier's customers]. In particular, give details of how quickly any required additional security could be arranged and put into place, and the type of new security that would be used.
7. Give details of the Licensee's current arrangements for complying with transmission credit cover by providing the following information:
- i) type of security instrument;
 - ii) secured credit limit;
 - iii) current level of indebtedness;
 - iv) details of any failures to pay invoices in the part 12 months; and
 - v) explain how the Licensee would comply with the credit cover requirements if it had to supply electricity to customers of **[failed supplier]**. In particular, give details of how quickly any required additional security could be arranged and put into place, and the type of new security that would be used.
8. Give details of the Licensee's current arrangements for complying with its obligations under its Electricity Sales Agreements in Scotland by providing the following information:
- i) type of security instrument;
 - ii) secured credit limit;
 - iii) current level of indebtedness;
 - iv) details of any failures to pay invoices in the part 12 months; and
 - v) explain how the Licensee would comply with the credit cover requirements if it had to supply electricity to customers of [failed supplier's customers]. In particular, give details of how quickly any required additional security could be arranged and put into place, and the type of new security that would be used.

Change of supplier process

12. Give details of the arrangements the Licensee will make to:
- i) manage the change of supplier process); and

- ii) obtain meter reads from customers within 14 days of the last resort supply direction taking effect.

Section D – Customers

Customer service

9. Explain the arrangements that the Licensee will make to deal with the customers of **[failed supplier]**, including:
- i) how customers will be informed about what has happened;
 - ii) how customers' written and telephone enquiries will be dealt with;
 - iii) how it will be ensured that customers will receive a timely and accurate bill;
 - iv) how customers will be made aware of their options to sign up to a contract with the Licensee or another supplier; and managing the change of supplier process.

Pre-payment meter customers

15. Explain the arrangements that the Licensee will make to deal with the failed supplier's prepayment customers, including:
- i) how arrangements will be made to deal with the provision of new prepayment devices
 - ii) how arrangements will be made to enable the provision of emergency credit
 - iii) how arrangements will be made to deal with the switching of customer meters to the Licensee's deemed contract tariff rate for customers whose meter have been programmed to collect a proportion of debt
 - iv) provide details of the number and type of PPM customers already supplied by the Licensee

Section E – deemed contracts

Prices

16. Domestic customers

(a) complete the table below, giving the average GB deemed contract price for each group if directed to supply gas pursuant to standard condition 29 for a domestic electricity customer with average consumption as defined on the energywatch pricing factsheets (3,300 kWh per annum for electricity customers).

(NB – Complete all un-hashed cells. All prices must include VAT)

	DOMESTIC CUSTOMERS – AVERAGE PRICE					
	Standard Credit		Direct Debit		PPM	
	p/kWh	Standing charge (pa)	p/kWh	Standing charge (pa)	p/kWh	Standing charge (pa)
No Levy claim						
Levy claim						

(b) If the Licensee's deemed contract prices as a SoLR for domestic customers differ from its normal deemed contract prices explain the reasons for the different pricing structures.

17. Non-Domestic customers

(a) complete the table below, giving the preferred number and the maximum number of customers in each group and the average GB deemed contract price for each group if directed to supply electricity pursuant to standard condition 29 for a non-domestic electricity customer.

(NB – Complete all un-hashed cells. All prices must include VAT)

		NON-DOMESTIC CUSTOMERS – AVERAGE PRICE			
		England & Wales		Scotland	
		p/kWh	Standing charge	p/kWh	Standing charge
No Levy claim					
Levy claim					

(b) the Licensee's deemed contract prices as a SoLR for non-domestic customers differ from its normal deemed contract prices explain the reasons for the different pricing structures.

Termination terms

18. Provide a copy of the Licensee's deemed contract termination clauses and confirm that the licensee will allow termination on the grounds given in standard licence condition 29 (15) (b).

Appendix 5 – Ofgem’s SoLR selection criteria

- 5.1 This Appendix sets out the selection criteria that Ofgem is likely to use in assessing which supplier(s) to direct to be a SoLR. The criteria should be read in conjunction with the information requests in Appendix 4. **The criteria may vary depending on circumstances of the failure – this is therefore provided for guidance only.**

Section A – Data Protection

High-Level Aggregate Portfolio Information (Question 1 on the information request)

Ofgem policy: Respondents to the information request must confirm that the high-level aggregate portfolio information provided with the information request will only be used for the purposes of making a decision about whether to volunteer for the role of SoLR and for providing the information requested by Ofgem.

Reason: The information provided to potential SoLRs is covered by the provisions of the Utilities Act 2000 s105(1). This restricts further disclosure of the information. In addition a SoLR(s) may be at a competitive disadvantage if other suppliers use information about the portfolio of customers that it has acquired through a last resort direction.

Criteria: A statement from potential SoLRs confirming that the high-level aggregate portfolio information will only be used for the given reasons.

Data Protection Principles (Question 2)

Ofgem policy: If appointed as SoLR to some or all of the failed supplier’s customers, suppliers will receive from Ofgem any information that it has available on those individual customers. Respondents must confirm that, in these circumstances, they will comply with the data protection principles set out in Schedule 1 of the Data Protection Act 1988, and that the data disclosed by Ofgem will only be used for the purpose of providing information to Ofgem or for the purpose of supplying gas pursuant to a last resort supply direction.

Reason: As a ‘data controller’ within the meaning of section 1(1) of the Data Protection Act 1988, Ofgem considers it important to raise this issue with potential SoLRs and to seek a statement prior to providing individual customer data.

Criteria: A statement from potential SoLRs confirming the request made in the information request.

Section B – General information

Volunteer SoLR (Question 3)

Ofgem policy: Other things being equal, preference will be given to those suppliers who volunteer for the role of SoLR. Ofgem would prefer to appoint one SoLR for all the failed supplier’s gas customers and one SoLR for its electricity customers (this may be the same SoLR). However there may be circumstances where the portfolio has to be split. In gas,

Transco's systems allow the portfolio to be split by domestic/non-domestic customers. In electricity the portfolio can be split by GSP Group.

Reason: Ofgem considers that customers' interests will be best served by a supplier that wants to be a SoLR provided Ofgem is satisfied that the volunteer has the capacity and resources to fulfil the role. One SoLR would make it easier for customers to know who their new supplier was. In addition system constraints in gas mean that the operation of more than one SoLR would be difficult.

Criteria: The answer "Yes" to being a volunteer SoLR, whatever the customer group.

Levy Claim (Question 4)

Ofgem policy: Other things being equal, preference will be given to those suppliers who state that they will not make a claim for last resort supply payments pursuant to standard condition 29A of the supply licence. Ofgem will decide on a case by case basis whether, and in what circumstances, it might be appropriate for a SoLR to make a claim on the levy. This will be explained to potential SoLRs as part of the information-gathering process.

Reason: A SoLR's deemed contract prices can be set so that it can cover its reasonable costs and reasonable profits, unless Ofgem directs otherwise for domestic customers. We would therefore expect an efficient SoLR to be able to cover its own costs and not rely on additional payment through the levy arrangement, although there may be circumstances in which this is not possible.

Criteria: **[These will vary depending on the circumstances of the failure and will be sent to potential SoLRs with the information request.]**

Section C - Industry arrangements

Sourcing gas and electricity; network agreements

Ofgem policy: The SoLR should have robust arrangements in place that will enable it to economically and efficiently supply the failed supplier's customers. The SoLR should have arrangements in place to source the additional gas and electricity required for any customers acquired as part of a last resort direction, whilst enabling it to continue to supply its existing customers. The SoLR's shipper must have signed the appropriate Network Codes for the licensed gas transporters on whose networks the Licensee may be a SoLR. The Licensee must have entered into DUoSA with all distribution companies in whose areas it may be a SoLR.

Reason: Ofgem will not issue a last resort supply direction to a supplier that may not be able to supply the acquired customers and its existing customers. Ofgem will not issue a last resort supply direction to a supplier if, as a result of the direction, the supplier (or its shipper) would be in breach of its licence or industry codes and agreements.

Criteria: Gas suppliers must have an existing agreement with a licensed shipper. All suppliers should demonstrate that they can supply additional customers without jeopardising supply to existing customers.

Credit Cover

Ofgem policy: SoLR or its shipper must be able to comply with the current credit cover rules.

Reason: The transfer of customers to SoLR is likely to be delayed if the SoLR or its shipper is in breach of credit cover rules. Other market participants and other customers may be exposed to smeared costs in the event of default and there is inadequate cover.

Criteria: SoLR must provide evidence of compliance with current credit cover rules and the ability to provide the increased cover required without reaching its credit limits. **NB The information provided will be checked with relevant parties.**

Change of Supplier Process

Ofgem policy: SoLR must be able to operate the relevant change of supplier processes to minimise disruption to customers and other industry participants.

Reason: To minimise disruption to customers and enable them to be billed.

Criteria: Ofgem will assess the issues which the supplier would face in processing the failed supplier's customers. In particular, Ofgem will assess the SoLR's ability to assimilate customer information, obtain meter reads when required and issue bills.

Section D – Customers

Customer Service

Ofgem policy: SoLR to have adequate arrangements in place to deal with customer queries

Reason: Although Ofgem, Network Operators and consumer groups will be able to provide some information to the failed supplier's customers, Ofgem expects a SoLR to deal with the bulk of customer enquiries.

Criteria: Ofgem will assess the supplier's ability to deal with customer enquiries taking into account draft letters, notices, Q&As prepared, call centre capability and billing arrangements.

Prepayment Meter Customers

Ofgem policy: The SoLR should recognise that there are particular difficulties associated with a last resort direction to supply prepayment meter customers, and should have robust arrangements in place to enable it to deal with the challenges, minimising disruption to affected customers.

Reason: Prepayment meter customers of a failed supplier will face additional problems as a result of their supplier's failure. In particular, the customers may not be able to get emergency credit or replacement prepayment meter devices quickly. The SoLR should recognise the additional issues associated with these customers and should have arrangements in place to deal with them.

Criteria: Ofgem will assess the supplier's ability to deal with prepayment customers acquired as part of a last resort direction.

Gas Standard Condition 32(3)

Ofgem policy: If directed to supply a failed supplier's customers, the SoLR should not refuse to supply gas to domestic customers on either of the grounds set out in subparagraphs (c) ("the domestic customer having requested a supply of gas, declines to enter into a domestic supply contract[...]") and (h) ("[...] the licensee has requested a deposit by way of security for the payment of charges and the domestic customer has not paid this") of standard condition 32(3).

Reason: Ofgem does not believe that the SoLR should be able refuse to supply gas to customers acquired by a last resort supply direction on either of the grounds above.

Criteria: Suppliers to confirm that they will not refuse to supply customers for these reasons.

Section E - Deemed Contracts

Deemed Contract Prices

Ofgem policy: A failed supplier's customers should not expect to be protected from paying increased prices. However, deemed contracts can reflect no more than the reasonable costs of supply, (including costs attributable to the purchase of gas at short notice) together with reasonable profit. The SoLR's prices should be clear. To allow easier comparison, Ofgem requires an average price for each customer group.

Reason: in this instance customer protection means ensuring continuity of supply; standard condition 29(11) limits the price that can be charged; standard condition 29 (16) requires new contracts for the purchase of gas for SoLR to be made as economically as possible in the circumstances; customers need to be able to understand SoLR's charges; customers need to be able to compare prices to decide whether to switch from the SoLR.

Criteria: Ofgem will consider the SoLR's prices taking into account the explanation given by the SoLR for the difference, if any, between its deemed contract prices in normal circumstances and its deemed contract prices as a SoLR.

Deemed Contract Termination Terms

Ofgem policy: Ofgem wants customers acquired by a SoLR to be able to quickly enter into a new supply contract with either the SoLR or another supplier.

Standard condition 29(15) states that a SoLR's deemed contract may provide that customers may not terminate the deemed contract except, amongst other things, "on taking a supply at the premises under a contract with the licensee or another gas/electricity supplier". In order for customers to switch as quickly as possible, Ofgem expects SoLRs to include this provision in their deemed contracts.

It is Ofgem's understanding of Standard Licence Condition 29(15) of the gas and electricity supply licences is that a customer may terminate his deemed contract if any of the three conditions (a) to (c) is met. Therefore, it is our view that customers do not require the consent of the SoLR to terminate their contracts.

Reason: Ofgem recognises that if they are being supplied on a deemed contract by the SoLR, the failed supplier's customers may pay higher prices than they would if they were to transfer onto a standard contract with the SoLR or to another supplier.

Signing a customer onto a contract will benefit the SoLR as it will have access to additional and accurate information about the customer. It is also inevitable that some customers may wish to choose a different supplier. An efficient SoLR should be able to manage customers moving onto contracts with the SoLR or transferring away from it to other suppliers.

Criteria: Ofgem will consider whether a supplier's termination terms meet Ofgem's preference.