

Consultation

Statutory Consultation on strengthening milestone assessments and additional reporting requirements

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In the past year we have introduced new requirements on energy suppliers aimed at improving standards of financial resilience and consumer protection. Recent developments in the energy sector, including the failure of multiple retail suppliers have further emphasised the need for suppliers to have sustainable and resilient business models, including the ability to effectively manage market volatility and financial risk.

In this consultation we propose introducing several targeted measures aimed at protecting consumers from the harms that can be caused by unsustainable growth and unchecked business change. These measures include proposals to strengthen our existing milestone assessment regime, and increased reporting requirements so that we can more closely monitor significant commercial developments and personnel changes proposed by suppliers.

We welcome views from energy consumers and others with an interest in the retail energy supply market. We particularly welcome responses from energy suppliers and consumer groups.

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 wherever possible, put the confidential material in separate appendices to your response.

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Context

In the past year, Ofgem has introduced new requirements on suppliers aimed at improving standards of financial resilience and consumer protection. In November 2020, we published our Decision and Guidance on introducing milestone assessments as part of the Supplier Licensing Review (SLR) reforms. As suppliers reach certain customer number thresholds, milestone assessments will ensure that suppliers are adequately prepared and resourced to serve customers and meet additional regulatory and statutory obligations as they grow.¹ In March 2021, we published our Guidance on the Financial Responsibility Principle² aimed at ensuring suppliers act in a more financially responsible manner and take steps to bear an appropriate share of their risk. The introduction of these requirements allows us to request further information from suppliers to ensure they are acting responsibly financially, reducing the risk of potential consumer harm and poor financial practice having a negative effect on the GB energy market.

Following the unprecedented and unexpected rise in gas and electricity prices over recent months, we also announced in our 29 October 2021 Open Letter³ that we would take further steps to 'raise the bar' in terms of what we expect from suppliers with regards to financial risk management to reduce the risks facing consumers going forward, and to ensure the energy sector is resilient against potential continued global market volatility.

Today, we have published a suite of documents concerning our proposed actions to strengthen the financial resilience of suppliers. This outlines how we will strengthen our regulatory regime to minimise consumers' exposure to financial risks. We have also confirmed our decision to extend the assessment window for new supply licence applications as we continue to strengthen the requirements for new suppliers looking to enter the retail energy market.

This consultation sits alongside our other proposed actions to strengthen the financial resilience of suppliers and contains targeted proposals to strengthen our milestone assessment regime and more closely monitor significant commercial developments and

¹ Ofgem (2020) [Decision on the Supplier Licensing Review: Ongoing requirements and exit arrangements | Ofgem](#)

² Ofgem (2021) [Guidance on the Financial Responsibility Principle \(ofgem.gov.uk\)](#)

³ Ofgem (2021) [Rising wholesale energy prices and implications for the regulatory framework | Ofgem](#)

personnel changes proposed by suppliers⁴. Alongside our proposals in this consultation concerning significant commercial developments and personnel changes, we are also considering what other measures, if any, should be taken to ensure significant commercial developments and personnel changes do not lead to consumer harm, and we will consult where needed on these separately.

Our proposals and rationale for intervention

Milestone assessments

We want to ensure suppliers can demonstrate their business models are financially sound, have appropriate risk management strategies, and are adequately resourced for their size to enable sustainable growth in line with the new Financial Responsibility Principle⁵. In our 29 October 2021 Open Letter, we announced that we will conduct more regular assessments of supplier finances and take a more robust approach to assessing suppliers' operational capacity and strategies as they reach the 50,000 and 200,000 domestic customer milestones⁶ to limit financially unsustainable actions in the market.

Building on this, we are now consulting on introducing a new supply licence condition (SLC) requiring a supplier to pause domestic customer onboarding once they reach the 50,000 and 200,000 domestic customer milestones for each of the relevant gas and electricity supply licences until such time as we have completed any necessary milestone assessment and the supplier has had sufficient time to take any necessary action. Were we to proceed with implementing this new licence condition, we envisage developing a set timeframe for completing milestone assessments and setting the timeframe out in Guidance to be published alongside our Decision. We currently think that it may take 30-60 days to complete a rigorous assessment, provide feedback and for any necessary action to be taken. To help inform our thinking on the optimum timeframe, we have included a consultation question in this document seeking views on this specific element of our proposal.

⁴ In this document "commercial developments" refers to trade sales/purchases and Relevant Merger Situations as defined in Standard Licence Condition 19AA while "personnel changes" refers to changes concerning Persons with Significant Control and Persons with Significant Managerial Responsibility or Influence, also as defined at standard licence condition 19AA.

⁵ Ofgem (2020), Appendix 3 of the Decision document [Decision on the Supplier Licensing Review: Ongoing requirements and exit](#)

⁶ Ofgem (2020) [Milestone assessment guidance \(ofgem.gov.uk\)](#)

This measure will temporarily constrain a supplier's ability to grow and compete. We believe that imposing this temporary, timebound constraint is proportionate, especially considering recent events as it will guard against consumers being exposed to the mutualised costs that come with unchecked growth that turns out to be unsustainable. For financially resilient suppliers that plan well in advance, this new requirement should not represent a significant new burden. They will already have the plans and information in place that we will request from them to inform our assessment and will in practice be keen to engage proactively with us well before they reach the relevant milestone. Indeed, if a supplier identifies that it is likely to reach a milestone soon and provides the necessary plans and information in advance of reaching that milestone, we will have the power to switch off the requirement to pause domestic customer onboarding. We will set out more detail to help direct suppliers towards proactive and timely engagement in Guidance.

The new measure is designed to ensure that companies with weak business models and poor business practices do not grow unchecked. It should help prompt these companies to identify weaknesses in their positioning and put themselves on a more stable footing before they expand further. This will reduce the risks poorly-financed suppliers pose to consumers and go towards helping prevent, for example, significant costs associated with supplier failures.

As we continue to build our proposed actions to strengthen the financial resilience of suppliers, including enhanced entry requirements, we will build an increasingly developed picture of the most likely points along a supplier's growth path where risks may become most acute. This enhanced intelligence may suggest the need for additional milestone assessment points, or for the existing thresholds to be adjusted. We are therefore also consulting on adding flexibility to the current milestone assessment requirements such that, in future, the existing thresholds can be adjusted, and additional milestones can be created.

Significant commercial developments and personnel changes

We currently have requirements in the SLCs governing significant commercial developments and personnel changes. These SLCs require suppliers to, for example, notify Ofgem prior to entering into binding trade sale/purchase agreements and notify us of key changes in personnel. In 2020 we also introduced specific provisions preventing trade sales in specified circumstances.

Building on these existing requirements, we are now consulting on requiring that the Authority is notified about significant planned commercial developments and personnel changes a defined period in advance of them occurring to allow the Authority time to carry

out an assessment of the impacts these changes may have on consumers and for any necessary action to be taken. We propose that the assessment period would be timebound, and that the precise timeframe for completing the assessment would be set out in Guidance. We currently think that it may take 30-60 days for a rigorous assessment to take place; for feedback to be provided and actioned. To help inform our thinking on the optimum timeframe, we have included a consultation question in this document seeking views on this specific element of our proposal.

We recognise that the potential for a significant commercial development such as a trade sale/purchase to subvert or distort the supplier of last resort process⁷; result in mutualised cost or otherwise lead to consumer harm, is heightened during a time when a large number of suppliers are facing severe financial challenges. We also recognise that the risks to consumers of a significant commercial development proceeding where consumers' interests have not been sufficiently accounted for has the potential be very significant in a single case.

Changes in key personnel – in particular, the appointment of unfit and improper persons to important roles within a company – can have equally significant impacts on the running of a business and ultimately on consumers where, for example, the business fails.

It is with these factors in mind that we believe strengthened reporting requirements are needed to ensure that significant commercial and personnel changes are carefully scrutinised, and action taken if necessary before they proceed.

Impact Assessment

The policy measures proposed could result in 'significant impact' on the supply of gas and electricity markets, as described under the criteria in s.5A of the Utilities Act 2000, therefore an Impact Assessment (IA) is required. Given the limited scope of the measures we are proposing, we believe a compressed IA is proportionate and we set out our IA here. We have made our assessment against a 'do nothing' approach.

⁷ Under Standard Licence Condition 19D (Electricity) and 19F (Gas).

Impact on consumers - energy bills

The measures proposed in the consultation will reduce the risk of a supplier 'growing' without having sound financial resilience and strategies in place. They will also reduce the risk of inappropriate commercial or personnel changes occurring, in turn reducing the risk of consumers bearing the costs associated with a supplier failure, costs otherwise being mutualised, or other harms caused by unfit or improper individuals taking up key roles. In turn, this will mitigate the risk that consumers' bills rise in future to pay for any mutualised costs. This will particularly protect consumers on lower incomes and in vulnerable circumstances, who tend to spend a higher proportion of their income on energy and are therefore heavily impacted by the costs associated with supplier failures.

Impact on consumers - confidence and trust

Consumer confidence could increase in time due to Ofgem's increasing oversight of supplier growth and significant commercial and personnel changes. If suppliers only grow on a sustainable footing and significant commercial and personnel changes are closely monitored, consumers should feel more confident about switching within the market. They should also feel more confident if these measures prevent avoidable supplier failures and minimise associated market disruption.

Impact on suppliers/industry

Suppliers that want to grow in the market could face increased costs if they must comply with more controls when they reach customer thresholds. It may cost them more to demonstrate their compliance and remedy any issues. However, a well-run and responsible supplier should have the necessary information available as part of its normal business operations. They should incur minimal administrative costs in providing relevant information to Ofgem. They may also incur costs if they have to pause marketing campaigns and withdraw tariffs from Price Comparison Websites. However, suppliers should be able to plan for any additional costs. They will know when they are likely to trigger the milestone assessment and how long it will take to complete, minimising cost uncertainty.

They would also face only a temporary reduction in revenue due to having to pause customer onboarding. Suppliers would forgo some revenue for every customer they could have onboarded during the milestone assessment period. However, it very much depends on how quickly a supplier can onboard customers. It will vary with each

supplier and depend on their systems and processes. Overall, any reduction in revenue is likely to be minimised if the supplier provides Ofgem with the relevant information to the required standard and in good time. In some cases, there will be no need for suppliers to pause new customer onboarding at all.

Suppliers may think that the additional reporting requirements concerning significant commercial developments amount to disproportionate regulation of otherwise freely contracting parties. For example, in the case of a trade sale/purchase, they may see it as an unnecessary barrier to selling parts of their business to a willing buyer. It may damage small suppliers' confidence in their ability to exit the market if they believe there are barriers to doing so. Suppliers engaging in significant commercial developments and making key personnel changes that will not lead to consumer harm will however face limited impacts.

Larger existing suppliers would operate in a market where smaller competitors are temporarily unable to compete while they complete milestone assessments. Existing suppliers would have greater certainty and confidence about their own market position and that they are competing against sustainable suppliers. This could help them raise finance and carry out more robust and longer-term business planning. It is likely consumers will benefit if suppliers have a longer-term, more strategic approach to their operations.

Impact on competition

If smaller suppliers grow more slowly or do not expand beyond certain customer thresholds, there will be fewer that can generate efficiencies through economies of scale. It is perhaps less likely therefore that they could reduce operating costs and exert competitive pressure on rivals through more competitive tariffs. However, this is likely to have minimal impact. Well-run suppliers should be able to act on any issues emerging from milestone assessments, continue to grow, and generate efficiencies through growth.

Implementation

Our proposals require amending the supply licence and associated Guidance. If we decide to proceed with one or both of these measures, we expect the change(s) to take effect 56 days after the Decision and updated Guidance is published. We aim for changes to take effect in April 2022.

Questions

Question 1: *Milestone assessments* - What do you believe to be the optimum timeframe for information to be provided and assessed and for any necessary actions identified by an assessment to be taken?

Question 2: *Significant commercial developments and personnel changes* - What do you believe to be the optimum timeframe for information concerning a significant commercial development/personnel change to be provided and assessed and any necessary action identified by the assessment to be taken?

Question 3: Do you have any other comments on our proposals?

Next steps

We welcome responses to this consultation by 17 January 2022. We expect to publish our Decision having reviewed responses and obtained additional stakeholder feedback where needed in time for any changes to take effect in April 2022.

Appendix 1 – Privacy notice on consultations

Personal data

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

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

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

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

2. Why we are collecting your personal data

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

3. Our legal basis for processing your personal data

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

3. With whom we will be sharing your personal data

We will not share personal data contained in confidential consultation responses with any organisation outside of Ofgem unless legally obligated to do so.

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

Your personal data will be held for the duration of the consultation and decision, until the completion of any related legal proceedings.

5. Your rights

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

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete

- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

6. Your personal data will not be sent overseas

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

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

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

Appendix 2 – Draft Standard Licence Conditions

Proposed new drafting is underlined while existing drafting proposed for deletion is ~~struck through~~.

Condition 19AA. ~~Additional reporting requirement~~ Notification requirements regarding significant commercial/personnel developments

19AA.1 The licensee must notify the Authority of any change in any of the matters listed in ~~19AA.2 SLC 19AA.5~~, promptly and within a reasonable timescale.

19AA.2 Unless the Authority otherwise directs, the licensee shall:

- a) not enter into a binding agreement for a Trade Sale or Trade Purchase;
- b) not conclude arrangements which, if carried into effect, will result in the creation of a Relevant Merger Situation;
- c) take all reasonable steps not to allow a change in Person with Significant Control in respect of the licensee; or
- d) take all reasonable steps not to allow a change in person with Significant Managerial Responsibility or Influence in respect of the licensee,

until such time as the licensee has provided any information required by the Authority (whether identified in any guidance issued under this SLC 19AA or in response to a notification from the licensee) to complete its SLC 19AA Assessment and the Authority has notified the licensee that it has completed a SLC 19AA Assessment.

19AA.3 The licensee must have regard to the findings of any SLC 19AA Assessment conducted pursuant to this SLC 19AA and notified to it.

19AA.4 The licensee is not required to comply with SLC 19AA.2 to such extent and subject to such conditions as the Authority may from time-to-time direct.

~~19AA.2~~19AA.5 The matters referred to in ~~paragraph~~ SLC 19AA.1 are the following:

- a) whether the licensee is entering into a binding agreement for a Trade Sale or a Trade Purchase, and for the avoidance of doubt, the notification should take place in accordance with the number of days required for notification as specified in or determined under guidance issued by the Authority on this SLC 19AA before the licensee enters into such an agreement;
- b) the address of the licensee's registered office;
- c) the e-mail address of the licensee's regulatory contact;

- d) whether the licensee is an Active Supplier in respect of Domestic Customers and / or Non-Domestic Customers;
- e) whether there is a reasonable prospect that a Relevant Merger Situation has arisen will arise in respect of the licensee and for the avoidance of doubt, the notification should take place in accordance with the number of days required for notification as specified in or determined under guidance issued by the Authority on this SLC 19AA before the licensee concludes the relevant arrangements;
- f) whether there is a reasonable prospect that there will be a change in any Person with Significant Control in respect of the licensee (whether by virtue of one or more persons ceasing to have Significant Control and/or by virtue of one or more person who does not have Significant Control acquiring it) and for the avoidance of doubt, the notification should take place in accordance with the number of days required for notification as specified in or determined under guidance issued by the Authority on this SLC 19AA before the licensee makes such change;
- g) whether there is a reasonable prospect that there will be a change in any Person person with Significant Managerial Responsibility or Influence in respect of the licensee (whether by virtue of one or more persons ceasing to have Significant Managerial Responsibility or Influence and/or by virtue of one or more person who does not have Significant Managerial Responsibility or Influence acquiring it) and for the avoidance of doubt, the notification should take place in accordance with the number of days required for notification as specified in or determined under guidance issued by the Authority on this SLC 19AA before the licensee makes such change;
- h) whether the licensee supplies any Customers through a White Label Tariff;
- i) any significant changes that may affect how a licensee operates.

19AA.6 The licensee must have regard to any guidance on SLC 19AA (including in respect of definitions which appear in standard condition 1) which, following consultation, the Authority may from time-to-time revise.

Definitions for condition

~~19AA.3~~19AA.7 For the purposes of this condition:

Person with Significant Control has the same meaning as under section 790C of the Companies Act 2006.

Relevant Merger Situation has the same meaning as under section 23 of the Enterprise Act 2002.

SLC 19AA Assessment means an assessment of significant commercial/personnel developments by the Authority against the requirements set out in guidance issued by the Authority on this SLC 19AA and (subject to the licensee's provision of information required by the Authority) to be carried out within the period specified in such guidance.

Condition 28C. Milestone Assessments assessments

28C.1 The licensee must notify the Authority, in writing, when there is a reasonable prospect that it will imminently reach, or at the latest when it reaches its first 50,000 Domestic Customers, or such other number of Domestic Customers as directed by the Authority, for the purpose of undergoing the relevant milestone assessment.

28C.2 The licensee must notify the Authority, in writing, when there is a reasonable prospect that it will imminently reach, or at the latest when it reaches its first 200,000 Domestic Customers, or such other number of Domestic Customers as directed by the Authority, for the purpose of undergoing the relevant milestone assessment.

28C.3 The licensee must notify the Authority, in writing, when there is a reasonable prospect that it will imminently reach, or at the latest when it reaches such number of Domestic Customers as may be specified by the Authority in a direction, for the purpose of undergoing the relevant milestone assessment.

28C.4 From the earlier of the time at which the licensee either:

- a) submits a notification to the Authority as required by SLC 28C.1, SLC 28C.2 or a direction issued by the Authority in respect of this SLC 28C; or
- b) has reached the specified number of Domestic Customers specified in SLC 28C.1, SLC 28C.2 or a direction issued by the Authority in respect of this SLC 28C,
unless directed otherwise by the Authority, the licensee must not enter into any new Domestic Supply Contracts, unless that Domestic Supply Contract is a Deemed Contract or a Contract with a Domestic Customer with whom that Supplier already has a Contract, until such time as the Authority has notified the licensee that it has completed the relevant milestone assessment in line with the timescale set out by the Authority in any guidance issued on SLC 28C. To the extent that this SLC 28C.4 applies, the licensee shall not be obliged to comply with SLC 22.2.

28C.5 The licensee must have regard to the findings of any milestone assessment conducted pursuant to this SLC 28C and notified to it.

~~28C.3~~28C.6 The licensee must have regard to any guidance on ~~standard condition~~ SLC 28C (including in respect of definitions which appear in standard condition 1) which, following consultation, the Authority may issue and may from time-to-time revise.

28C.7 The licensee is not required to comply with SLC 28C.4 to such extent and subject to such conditions as the Authority may from time to time direct.