



Making a positive difference
for energy consumers

Gas and electricity licensees,
potential new entrants, consumer
groups and any other interested
parties

Email: licensing@ofgem.gov.uk

Date: 15 December 2021

Dear colleagues,

Supply Licence Applications: Reasons for the decision to amend the time period for assessment and to remove tacit authorisation

On 29 October 2021 we published an open letter to energy suppliers ('the October letter')¹ which highlighted the steps we are taking to protect the short- and long-term interests of consumers, providing greater certainty for investors and strengthening the resilience of the sector. The letter focussed on how we can use existing licence conditions to ensure suppliers act in a more financially responsible manner, and indicated where we are considering broader reform of regulatory frameworks to reflect the risks that the current situation has revealed. Today, as part of the Building Energy Market Resilience package² we have published an open letter setting out our approach to strengthening our regulatory regime for supplier financial resilience. This outlines our action plan to strengthen supplier financial resilience and support them in developing robust management control frameworks to manage and mitigate risk. It also sets out how we will strengthen our regulatory regime to minimise consumers' exposure to financial risk.

The October letter indicated that as a vital step to restoring stability in the sector, in the interests of consumers, we had temporarily 'paused' assessment of applications for new supply licences, by extending the reasonable period of assessment, initially to a period of six months, subject to review.³ And we would continue to revoke unused or dormant supply licences as appropriate.

The Building Energy Market Resilience package sets out our action plan in response to the current unprecedented situation in the energy markets. The work we are carrying out will help us to put in place a new, enduring financial resilience and controls framework. Once in place we will use this framework to assess both new entrants and current suppliers, to ensure they are sufficiently robust. In the meantime, we consider it is important to continue to 'pause' our assessment of new applications to continue to protect the retail market, and consumers. Given the time needed to develop a new framework, we have decided to extend the six month pause, announced in the October letter, by a further three months.

This letter provides the reasons for the decision and sets out the supporting changes that we have made to the application guidance document:

¹ [Rising wholesale energy prices and implications for the regulatory framework \(ofgem.gov.uk\):
https://www.ofgem.gov.uk/sites/default/files/2021-10/20211028%20-%20JOB%20open%20letter%20to%20suppliers_0.pdf](https://www.ofgem.gov.uk/sites/default/files/2021-10/20211028%20-%20JOB%20open%20letter%20to%20suppliers_0.pdf)

² <https://www.ofgem.gov.uk/publications/building-energy-market-resilience>

³ So that, in the public interest, licence authorisations will not be deemed to be granted in that period.

- Appendix 1 provides a summary of the changes to the application guidance
- The updated application guidance can be found using the following link: [applying for a gas or electricity licence - 2019 guidance document 1.0 0.pdf \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consult/condappl/condappl/guidance/2019/guidance-1.0-0.pdf)

Changes to guidance: Amendment to the time period and removal of tacit authorisation

The licence application process is governed by the Provision of Services Regulations 2009.⁴ In accordance with regulation 19(6),⁵ Ofgem has put in place different arrangements to those set out in regulation 19(5) and previously in operation.⁶

Due to overriding reasons of public interest, tacit authorisation for supply licence applications does not apply to supply licences as an interim measure, and until further notice. We have put in place different arrangements to the deemed authorisation set out in 19(5) of the Provision of Services Regulations 2009⁷ and previously advised in this application guidance⁸, so that in the event that a supply licence application is not processed within the period set (or extended) it shall not be automatically deemed authorised.

In addition, we have amended the reasonable period for assessment of applications from 75 working days⁹ to nine months¹⁰ to set a new timescale for assessment. Supply licences may be granted within the nine month period, on an exceptional basis, where Ofgem/the Authority considers it is appropriate to do so in the circumstances.

Reasons for decision

Given our Principal Objective to act in the interests of existing and future consumers, and in light of the current market uncertainty, we consider the removal of tacit authorisation, and extension of the assessment period is a necessary and proportionate course of action, justified by overriding reasons of public interest.

We are taking these steps to protect consumers on public interest grounds. It will ensure that we have sufficient time to consider what information we might reasonably require to be able to conduct a full and robust assessment of the business models of new applicants, to make sure that they are sufficiently prepared in the context of the unprecedented wholesale market volatility. This is particularly important given the likelihood that future shocks to the market could occur, and the resultant impact that may have on under-prepared suppliers, and the potential for harm to consumers and the market in that scenario.

We have put in place these emergency measures without undertaking consultation as it is vital that we act now to control the harm that is caused to consumers and the market by multiple supplier exits. While the recent rise in gas prices is unprecedented, we need to plan on the basis that shocks like this could happen again. A key part of our planning will be that an appropriate level of checks and balances are in place to ensure we do not expose the retail market, and consumers, to excess risk and detriment. This is critical given recent change in market volatility and supplier failures. This will include reviewing licence conditions and the licence application process in due course.

⁴ <https://www.legislation.gov.uk/ukxi/2009/2999/contents>

⁵ <https://www.legislation.gov.uk/ukxi/2009/2999/regulation/19>

⁶ As previously published in our earlier version of our application guidance.

⁷ <https://www.legislation.gov.uk/ukxi/2009/2999/regulation/19>

⁸ Applying for a gas or electricity licence – version 1.0, published 18 June 2019

⁹ As previously published in our earlier version of our application guidance.

¹⁰ Subject to review.

We acknowledge that the decision to put in place different, extended, arrangements for supply licence applications will have an impact on existing and new supply licence applicants. As such, where there are specific concerns, we will engage to review the impact.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cathryn Scott', with a stylized, cursive script.

Cathryn Scott
Regulatory Director

Appendix 1: Summary of changes to the application guidance

A summary of changes made to the application guidance document is below:

Chapter and sections	Reason for change	Details
Chapter 2 Sections 2.22 – 2.23	Updated to reflect amendment to time period, with supporting commentary for context.	<p>2.22 Amended time period in table for Gas or Electricity Supply:</p> <p>75 working days 9 months²⁷</p> <p>²⁷This 9 month time period is subject to review.</p> <p>2.22 Added after table:</p> <p>We have amended²⁹ the reasonable period for assessment of supply licence applications from 75 working days³⁰ to 9 months³¹ to set a new timescale for assessment.³²</p> <p>²⁹Refer to: <i>Supply Licence Applications: Reasons for the decision to amend the time period for assessment and to remove tacit authorisation</i>, published on 15 December 2021 https://www.ofgem.gov.uk/publications/supply-licence-applications-reasons-decision-amend-time-period-assessment-and-remove-tacit-authorisation</p> <p>³⁰As previously published in our earlier version of our application guidance.</p> <p>³¹ Subject to review.</p> <p>³² Supply licences may be granted within the 9 month period, on an exceptional basis, where Ofgem/the Authority considers it is appropriate to do so in the circumstances.</p> <p>2.23 New section added</p> <p>Given our Principal Objective to act in the interests of existing and future consumers, and in light of the current market uncertainty, we consider this is a necessary and proportionate course of action, justified by overriding reasons of public interest.³³</p> <p>³³ This has changed as a result of the unprecedented situation and details of the reasons are set out in the decision document: <i>Supply Licence Applications: Reasons for the decision to amend the time period for assessment and to remove tacit authorisation</i>, published on 15 December 2021 https://www.ofgem.gov.uk/publications/supply-licence-applications-reasons-decision-amend-time-period-assessment-and-remove-tacit-authorisation</p>
Chapter 2 Sections 2.27 – 2.29	Updated to reflect that tacit authorisation no longer applies, with supporting commentary for context.	<p>2.27 changed to 2.28 and removed reference to supply:</p> <p>A supply, shipper, generator or interconnector licence will be deemed to have been granted by tacit authorisation on the first working day after the time period has lapsed⁴⁰ if no decision has been made within the time period.⁴¹</p> <p>⁴⁰ Unless there has been an extension to the time period, or we have notified you that the application is no longer considered duly made and therefore the clock on the time period has been stopped.</p> <p>⁴¹ In accordance with Regulation 19(5) of the Provision of Services Regulations 2009.</p>

		<p>2.32 new section added</p> <p>Due to overriding reasons of public interest, tacit authorisation for supply licence applications does not apply to supply licences as an interim measure and until further notice.⁴⁶ We are taking these steps to protect consumers on public interest grounds. It will ensure that we have sufficient time to consider what information we might reasonably require to be able to conduct a full and robust assessment of the business models of new applicants, to make sure that they are sufficiently prepared in the context of the unprecedented wholesale market volatility. This is particularly important given the likelihood that future shocks to the market could occur, and the resultant impact that may have on under prepared suppliers, and the potential for harm to consumers, and the market in that scenario.</p> <p>⁴⁶ Refer to: https://www.ofgem.gov.uk/publications/rising-wholesale-energy-prices-and-implications-regulatory-framework and <i>Supply Licence Applications: Reasons for the decision to amend the time period for assessment and to remove tacit authorisation, published on 15 December 2021</i> https://www.ofgem.gov.uk/publications/supply-licence-applications-reasons-decision-amend-time-period-assessment-and-remove-tacit-authorisation</p>
Chapter 4 Reference added at start to open letter published on 29 October 2021	For transparency to highlight this section of the guidance in particular is under review.	<p>Commentary added at start of chapter:</p> <p>***To be aware: Following the publication of the open letter to energy suppliers on 29 October 2021⁶² consideration is being given to how we approach licensing in the future, given the current shock to the market, and our desire to ensure we have sufficient checks and balances in place to avoid a repeat of the current crisis and ensure we do not expose the retail market, and consumers, to excess risk and detriment. Therefore this section of the application guidance in particular is under review. When updates are available, they will be published.***</p> <p>⁶² https://www.ofgem.gov.uk/sites/default/files/2021-10/20211028%20-%20JB%20open%20letter%20to%20suppliers_0.pdf</p>
Appendix 2 Updated version control table	To provide transparency around changes made.	<p>Added line to table:</p> <p>Updates to the following sections:</p> <ul style="list-style-type: none"> • Chapter 2: <ul style="list-style-type: none"> • Section 2.20-2.37 – updated time period and tacit authorisation arrangements for supply licence applications, and added supporting rationale • Chapter 4: added note at start • Footnotes: footnote 16 and 90 broken links amended • Throughout: section numbers and footnotes updated where appropriate <p>Publication date: 15 December 2021 Effective date: 15 December 2021</p>

<p>Footnotes</p> <p>Footnote 16 and 90</p>	<p>Broken links amended.</p>	<p>Footnote 16 amended: At paragraph 19: http://www.scotcourts.gov.uk/search-judgments/judgment?id=cdc395a6-8980-69d2-b500-ff0000d74aa7. The case was appealed to the Supreme Court, but this point was not the subject of appeal (see <i>Sustainable Shetland v Scottish Ministers</i> [2015] UKSC 4 at paragraph 21) Sustainable Shetland (Appellant) v The Scottish Ministers and another (Respondents) (Scotland) - The Supreme Court https://www.supremecourt.uk/decided-cases/docs/UKSC-2014-0216-Judgment.pdf</p> <p>Footnote 90 amended to 98 and link updated: SPAA: https://www.spaa.co.uk/Lists/SPAA%20Products%20Current/Schedule%2032%20-%20%20Meter%20Asset%20Manager%20Arrangements.pdf Schedule-32-Meter-Asset-Manager-Arrangements.pdf (spaa-cdn-1.s3.eu-west-2.amazonaws.com)</p>
<p>Throughout</p> <p>Section references and footnotes updated as required</p>	<p>For consistency/ease of reading.</p>	<p>Throughout the document.</p>