



Making a positive difference  
for energy consumers

Existing and future applicants

Email: [RetailFinancialResilience@ofgem.gov.uk](mailto:RetailFinancialResilience@ofgem.gov.uk)

Date: 04 February 2022

## Consultation on changes to Ofgem's licence application guidance

Dear colleagues,

On 15 December 2021 we published a suite of documents<sup>1</sup> setting out our approach and plan to boost financial resilience in the energy market, protecting consumer interests. As part of that we published an action plan on retail financial resilience<sup>2</sup> that outlined actions we propose to take to strengthen the financial resilience of suppliers, to ensure that risks are not passed on inappropriately to consumers (the 'Action Plan'). We also published a decision to extend the new supply application assessment period to nine months<sup>3</sup> and said that we would use that additional time to review the 'fit and proper' assessment in our licence application process.<sup>4</sup>

In our Action Plan we set out draft outcomes we want to achieve, including robust minimum standards, improved accountability with minimum requirements for those in leadership positions, and protecting consumer money. We have considered these outcomes in reviewing our licence application process and assessment of new entrants to the market. Ofgem has already strengthened its approach in this area, for example introducing tighter standards for new entrants in 2019. The number of new entrants fell from 35 during 2016-18, to 8 in 2019 and 2 in 2020. Our proposed changes below will ensure that new suppliers in particular have sustainable and resilient business models and the capacity to manage significant financial risks without passing inappropriate risks to consumers. Our intent is not to discourage well-financed new entrants, new business models, innovation or risk taking, but to reduce potential harm to energy consumers.

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<sup>1</sup> [Building energy market resilience | Ofgem](#), published 15 December 2021

<sup>2</sup> [Action plan on retail financial resilience | Ofgem](#), published 15 December 2021

<sup>3</sup> Action 8 in the Action Plan

<sup>4</sup> Action 7 in the Action Plan

We have reviewed our licence application guidance<sup>5</sup> and are now consulting on our proposed changes to it. We consider there is an overriding public interest in the changes we are proposing, which primarily relate to the way that we assess an applicant's suitability for a licence including the types and scope of information that we will require to assess an application. We set out a high-level summary of the key changes in this letter, with the proposed guidance published alongside it. Some of these changes will apply to all applications, whereas others will be just for gas and electricity supply licences. We have highlighted which licences are impacted in the relevant sections below.

### **Financial risk controls**

We are proposing to strengthen the requirements around financial risk management for **supply licence** applicants.

While we do not believe that all named persons in an application must have energy market experience, we do consider that those with overall financial responsibility for an energy company should have the necessary experience and capability to manage financial risks in the energy market. In light of recent events in the retail sector and the impact of mutualised costs on consumers, we consider that there is overriding public interest in us making this change. We will assess this through information provided during the application process. We will not require that applicants have previously fulfilled a specific role in an energy company, but evidence of relevant experience and/or qualifications would be highly relevant to our decision on whether to grant a licence. We would not consider it sufficient for an applicant to rely on the expertise of a consultant or advisor that does not hold decision-making authority in the company to fulfil this requirement.

We have clarified the guidance regarding submission of business plans, acceptable evidence for proof of funds and financial projections, for example requesting financial information in an Excel compatible format. These changes are principally aimed at helping applicants get it 'right first time' to avoid delays in our assessment process and enable Ofgem to scrutinise applicant's financial and operational capabilities.

We have also clarified that, where we propose to refuse a licence application, representations made by the applicant will not be considered if they seek to change material matters in the application or provide substantial new supporting material, for example by proposing slower growth targets or providing evidence of a new source of funding. Where an applicant wishes to amend their application at this stage, this must be submitted as a new application. We consider this a reasonable approach given applicants

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<sup>5</sup> [Applying for a gas or electricity licence \(ofgem.gov.uk\)](https://www.ofgem.gov.uk), published 15 December 2021

have the opportunity to provide supporting evidence at any point during the assessment process both in response to Ofgem questions and voluntarily.

Also of note to potential applicants for a supply licence, we recently published an update to our Action Plan to ensure that suppliers have sufficient control of their material economic and operational assets<sup>6</sup>, including draft guidance on the Operational Capability and Financial Responsibility principle. We expect new entrants to be compliant with any new obligations in this area from the point at which they enter the market. We have updated the guidance to reflect that we will consider whether the application as a whole suggests that the applicant's plans are consistent with the applicable licence conditions.

### **Scope of relevant persons and information to be disclosed**

Applicants **for all types of licences** must provide names of 'relevant persons' in various sections of the application form, covering Directors, Directors of any holding company or parent undertaking, persons in effective control, shareholders, and any person with significant managerial responsibility or influence (SMRI). Applicants must disclose certain information about any relevant person, such as unspent criminal convictions or involvement in Supplier of Last Resort (SoLR) events. However, to assist applicants in providing the necessary information 'first time', we have expanded on what we consider to be SMRI and relevant disclosures, particularly relating to involvement in other regulated companies.

Where an applicant is asked to provide CVs of relevant people, we have set out the minimum information that should be provided. This includes any role within a regulated company, alongside an outline of the duties and responsibilities in that post. This is to support our assessment of the 'fit and proper person' tests within the application process.

While we continue to acknowledge that a company at application stage may not have appointed all senior persons, we would expect that a business seeking a licence would have appointed (or made conditional offers to) persons to manage key areas of the business. Therefore, we have provided additional information in the draft guidance setting out that we would expect disclosures to cover all persons with managerial responsibility or influence over key business areas, for example financial management, regulatory compliance, trading or hedging, and customer interactions. Where there are gaps in the managerial team, we may consider whether the applicant's collective resourcing and capabilities are sufficient to commence any licensable activity.

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<sup>6</sup> [Update to action plan on retail financial resilience: supplier control over material assets | Ofgem, published 28 January 2022](#)

While it is possible for one person to hold responsibility for more than one key business area, we would generally expect that a well-governed company would have a range of key managerial individuals with responsibility for defined areas.

We consider that these changes are consistent with our principal objective to protect existing and future consumers, as they will better enable us to ensure that all persons with effective control of a company are fully disclosed at the application stage and suitable to hold a licence. Applicants may note that, after consulting on inserting a new licence obligation<sup>7</sup> last year, we are today publishing our decision<sup>8</sup> that requires suppliers to notify Ofgem of new appointments of senior personnel prior to their appointment, alongside evidence that these appointments meet our fit and proper requirements set out in the licence.

### **Treatment of applications as Tier 2 applications**

We propose minor changes to the criteria in our risk assessment that we conduct **for all types of licence applications**. Upon assessment, applications may be escalated to Tier 2 if the information disclosed in the initial application leads to a risk score of 2 or above. We propose to amend the risk assessment criteria to take account of market conditions and major industry programmes at the point of application. We consider that the current market conditions present an elevated risk to the financial stability of many new entrants and therefore an increased risk to consumers of poor service levels, supplier failure and ultimately mutualised costs, and therefore there is an overriding public interest in including this factor in our risk assessment and overall licensing process. As a result, we expect more supply and shipper licence applications to be classed and processed as Tier 2, though each application will be assessed on its own merits.

For the avoidance of doubt, we may refuse an application before the Tier 2 section of the application form has been submitted.

### **Next steps**

We are consulting on our proposed changes to the application guidance for 3 weeks. The consultation closes at **5pm on 25 February 2022**, and responses should be submitted in writing to [RetailFinancialResilience@ofgem.gov.uk](mailto:RetailFinancialResilience@ofgem.gov.uk)

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<sup>7</sup> [Statutory consultation on strengthening milestone assessments and additional reporting requirements | Ofgem, published 15 December 2021](#)

<sup>8</sup> [Decision on strengthening milestone assessments and additional reporting requirements | Ofgem, published 4 February 2022](#)

We propose that these changes take effect immediately upon publication of our decision (expected to be in March 2022), and that the new guidance is applicable to existing and new applications. This is consistent with our Action Plan, which sets out a pause on our processing of applications in order for us to review the application requirements in light of recent events. Following publication of our decision, we aim to give existing supply licence applicants a minimum of three weeks to provide any additional or updated information that may be required.

As per Action 10 of our Action Plan, we are initiating a wider review of the financial regulatory framework for suppliers. We will keep under review whether further amendments are needed to the application form and guidance as our thinking develops.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'RB Barnett', written in a cursive style.

**Rebecca Barnett**

**Deputy Director – Financial Resilience and Controls**