

# Guidance

## Applying for a gas or electricity licence (Draft for consultation)

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This guidance document is for people who want to know how to make a gas or electricity licence application, including applications for extensions, restrictions and modifications of areas of existing licences. It also applies to licensees who wish to seek consent to transfer their licence. It explains the relevant criteria and information requirements, what happens after a licence application is submitted, and what happens if we propose to refuse a licence application.

This guidance should be read in conjunction with the Gas and Electricity Applications Regulations<sup>1</sup> (together the 'Applications Regulations'). If we take steps which differ from this guidance, we will explain our reasoning.

This guidance is not applicable to offshore transmission licences or the smart meter communication licence.

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<sup>1</sup> The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2019, SI No 1023

The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2019, SI No 1024

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## How to use this guidance

### Chapters 1-3

All applicants must read the introduction, general information for applicants, and general assessment criteria.

### Chapters 4-8

You must then read the chapter(s) applicable to the type of licence(s) you are applying for.

### Chapter 9

If your application relates to a transfer, extension, restriction or modification of area of an existing licence please refer to chapter 9.

### Chapter 10

Finally, chapter 10 sets out what happens when we make our decision to either grant or refuse to grant a licence.

## 1. Introduction

### Licensable activities

1.1. The Gas Act 1986 (as amended) and the Electricity Act 1989 (as amended) (together "the Acts") make it an offence to carry out certain activities unless you hold a licence, or are exempt from this requirement. We grant licences to parties who are seeking to carry out these activities.

1.2. This licence application guidance relates to the Applications Regulations 2019, which are applicable to the following licensable activities.

#### **GAS:**

Licence type	Licensable activity permitted under the Gas Act 1986	Cannot be held in conjunction with
Gas transporter <sup>2</sup> ('GT')	<p>Allows the licensee to convey gas through pipes to premises, or to another system of pipelines operated by another GT. The licence allows the GT to:</p> <ul style="list-style-type: none"> <li>• convey gas through pipes to any premises within an area authorised by the licence; or</li> <li>• convey gas through pipes to any pipe-line system operated by another GT, or other pipeline system specified in the licence.</li> </ul>	Any other type of gas licence

<sup>2</sup> s.7(2) of the Gas Act and SLC 43 (Restriction on activity and financial ring fencing) of the Gas Transporter licence and standard special condition A36 of the of the gas transporter licences' held by gas distribution networks. Certification requirements in the Gas Act restrict transporter licensees from undertaking generation, production and supply activities.



Interconnector <sup>3</sup>	<p>Allows the licensee to participate in the operation of a gas interconnector which is defined as:</p> <ul style="list-style-type: none"> <li>• co-ordinating and directing the conveyance of gas into or through a gas interconnector; or</li> <li>• making such an interconnector available for use for the conveyance of gas.<sup>4</sup></li> </ul>	Any other type of gas licence
Shipper <sup>5</sup>	<p>Allows the licensee to arrange with a GT for gas to be introduced into, conveyed through, or taken out of a pipeline system operated by that GT. In all instances, the purpose of the gas movement should be general or for purposes connected with the supply of gas to premises.<sup>6</sup></p>	<ul style="list-style-type: none"> <li>- Gas Transporter</li> <li>- Gas Interconnector</li> </ul>
Supplier <sup>7</sup>	<p>Allows the licensee to supply to any premises gas which has been conveyed to those premises through pipes. A gas suppliers licence can allow for supply to either:</p> <ul style="list-style-type: none"> <li>• domestic<sup>8</sup> and non-domestic premises, or</li> <li>• non-domestic premises only.</li> </ul>	<ul style="list-style-type: none"> <li>- Gas Transporter</li> <li>- Gas Interconnector</li> </ul>

<sup>3</sup> s.7ZA of the Gas Act. Certification requirements in the Gas Act restrict transporter licensees from undertaking generation, production and supply activities.

<sup>4</sup> s.5(6) of the Gas Act.

<sup>5</sup> s.7A(2) of the Gas Act.

<sup>6</sup> Persons not involved in the physical conveyance of gas on the GB network system, but who trade gas as a commodity at the National Balancing Point (NBP), are not included in the definition of Gas Shipper and are therefore not required to obtain a Gas Shipper Licence.

<sup>7</sup> s.5(1) of the Gas Act.

<sup>8</sup> Domestic premises are premises used wholly or mainly for domestic purposes.

## ELECTRICITY:

Licence type	Licensable activity permitted under the Electricity Act 1989	Cannot be held in conjunction with
Generation <sup>9</sup>	Allows the licensee to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be given.	- Electricity Interconnector - Electricity Distribution - Electricity Transmission
Transmission <sup>10</sup>	Allows the licensee to participate in the transmission of electricity for the purpose of enabling a supply to be given.	Any other type of electricity licence
Interconnector <sup>11</sup>	Allows the licensee to participate in the operation of an electricity interconnector, which is defined as: <ul style="list-style-type: none"> <li>• co-ordinating and directing the flow of electricity into or through an electricity interconnector, or</li> <li>• making such an interconnector available for use for the conveyance of electricity.</li> </ul>	Any other type of electricity licence
Distribution <sup>12</sup>	Allows the licensee to distribute electricity for the purpose of enabling a supply to be given. Electricity is distributed from the National Grid Network through a low voltage network of wires to customers.	Any other type of electricity licence

<sup>9</sup> s.6(1)(a) of the Electricity Act.

<sup>10</sup> s.6(1)(b) of the Electricity Act and SLC B6 (Restriction on activity and financial ring fencing) of the Electricity Transmission licence. Certification requirements in the Electricity Act restrict transmission licensees from undertaking generation, production and supply activities.

<sup>11</sup> s.6(1)(e) of the Electricity Act. Certification requirements in the Electricity Act restrict interconnector licensees from undertaking generation, production and supply activities.

<sup>12</sup> s.6(1)(c) of the Electricity Act and SLC 29 (Restriction on activity and financial ring fencing of the Distribution Business) of the Electricity Distribution Licence for Distribution Network Operators (DNOs) and amended condition BA2 for Independent Distribution Network Operators (IDNOs).

Supply <sup>13</sup>	<p>Allows the licensee to supply electricity to premises. An electricity supply licence can be for supply to either:</p> <ul style="list-style-type: none"> <li>• domestic and non-domestic premises, or</li> <li>• non-domestic premises only.</li> </ul>	<ul style="list-style-type: none"> <li>- Electricity Interconnector</li> <li>- Electricity Distribution</li> <li>- Electricity Transmission</li> </ul>
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## Licence applications

1.3. In dealing with applications for licences, we comply with our principal objective. This is to protect the interests of existing and future consumers. These interests include the reduction of greenhouse gas emissions and security of supply.

1.4. We will carry out our functions in the manner considered best calculated to further the principal objective, where appropriate, by promoting effective competition. In complying with our principal objective, we will consider the need to:

- secure that licensees can finance their activities which are the subject of obligations under the Energy Act 2010, the Energy Act 2008, the Energy Act 2004, the Utilities Act 2000 or, as the case may be, the Gas Act 1986 (as amended) (the "Gas Act") or the Electricity Act 1989 (as amended) (the "Electricity Act"),
- secure that all reasonable demands for gas and electricity are met,
- contribute to the achievement of sustainable development, and
- have regard to the interests of particular customer groups, such as those with a disability, or those who are chronically sick.

<sup>13</sup> s.6(1)(d) of the Electricity Act.

1.5. Our application process takes into account the requirements of the Provision of Services Regulations 2009 (as amended).<sup>14</sup>

1.6. We also have regard to:

- the fact that various industry codes and agreements set out in detail the industry processes to which a licensee must adhere, and
- our aim of minimising regulatory burden and maximising the opportunity for new applicants to enter the GB energy market, including those based outside of Great Britain.

1.7. In carrying out our functions we must have regard to the need to secure that licensees are able to finance their activities which are the subject of obligations imposed on them. However, there is no available check that we can conduct on a potential licensee at the time of its licence application that will provide continuing comfort about financial viability once the licensee commences operations.

### **Exemptions and exceptions**

1.8. The Acts allow the Secretary of State to make orders giving exemptions from the need to hold licences. This means that some activities that fall within the definitions of a licensable activity are, in fact, exempt from the need to hold licences. Exemptions can apply to individual cases or can be on the basis of a class (type) of activity. Exemptions when granted can be unconditional or subject to certain conditions including length of time.

1.9. Schedule 2A of the Gas Act sets out certain exceptions to the need for a gas supply licence.

1.10. It is for the person carrying on, or proposing to carry on, an activity to ascertain whether the proposed activity falls within the scope of an exemption or exception. Ofgem

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<sup>14</sup> Provision of Services Regulations 2009

<http://www.legislation.gov.uk/ukdsi/2009/9780111486276/contents>

cannot comment on whether a person carrying on an activity or proposing to carry on an activity will be exempt or excepted from the requirement to hold a licence.

1.11. Generators under the threshold covered by the exemption orders do not need to obtain a licence. Applicants for generation licences should also be aware that it was held by the Court of Session (Inner House) in *Sustainable Shetland v Scottish Ministers* CSIH 60 that a generation licence is not required in order to apply for a section 36<sup>15</sup> consent.<sup>16</sup>

1.12. Please contact the Department for Business, Energy and Industrial Strategy (BEIS) if you wish to discuss the exemption orders. The relevant gas and electricity exemption orders may be found via our website: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-exemptions-and-exceptions>

## Context and related publications

1.13. We have published objective and non-discriminatory criteria and procedures for assessing gas and electricity applications since 2002. This is the latest version of our guidance, which takes into account the outcome of our 2018/19 review of the supplier licensing arrangements, [and further amendments made in response to the 2021/22 wholesale market volatility](#).<sup>17</sup> It replaces all earlier versions of Ofgem's licence application guidance.

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<sup>15</sup> Electricity Act 1989

<sup>16</sup> 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 *Sustainable Shetland v Scottish Ministers* [2015] UKSC 4 at paragraph 21) [Sustainable Shetland \(Appellant\) v The Scottish Ministers and another \(Respondents\) \(Scotland\) - The Supreme Court](#)

<sup>17</sup> <https://www.ofgem.gov.uk/publications-and-updates/supplier-licensing-review-final-proposals-entry-requirements>

1.14. This document should be read before you start to fill out your application for a new licence, or an application for the transfer, extension, restriction or modification of the area of an existing licence.<sup>18</sup>

1.15. The Applications Regulations and Word versions of the application forms can be found on our website: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/application-process>

1.16. The application form is the minimum that you will have to provide. Further questions may arise from the information provided, the results of our checks on your information, and/or any comments received from other teams within Ofgem or third parties. As far as possible this guidance covers the information that you are expected to provide. Where we request additional information from you we will explain our reasoning.

1.17. We recognise the need to encourage innovation and the fact that the structure of applicants' businesses will differ. The application criteria therefore do not set out prescriptive standards which must be met, but indicate to applicants the nature of information that they are expected to provide and the manner in which this information will be assessed.

1.18. This guidance is not applicable to offshore transmission licence applications. Applications for an offshore transmission licence (as defined by s.6C(5) of the Electricity Act 1989) are considered and granted by the Authority in accordance with The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009, SI No. 1340.

1.19. This guidance is also not applicable to the smart meter communication licence. This licence is granted for a fixed term through a competitive tender application process, using a Statutory Instrument – the Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012 (the Regulations).<sup>19</sup>

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<sup>18</sup> Extension and restriction applications only apply to supply, gas transportation and electricity distribution licence applications. Existing transmission licence holders may make an application for the modification of an area of a transmission licence.

<sup>19</sup> A single organisation is granted a smart meter communication licence under each of the Electricity

## Important notes

1.20. The provision of incorrect information or false statements during the licence application process is an offence and may result in criminal proceedings being instituted under section 43 of the Gas Act 1986 (as amended) or section 59 of the Electricity Act 1989 (as amended). It may also result in your application being refused or, if discovered after a licence has been granted, in your licence being revoked.

1.21. Being granted a licence does not mean that we have given any endorsement to the applicant or any associated person, their financial status, viability or profitability, or their business plan or methods. By applying to us for a licence you agree that the applicant and any related persons will not make any representations to the contrary.

1.22. Under no circumstances does Ofgem provide any form of assurance which third parties may rely on for any purpose. While we make an assessment at point of licensing on applicants' suitability to be granted an energy licence,<sup>20</sup> this does not infer any endorsement of the individuals concerned or assurance regarding their future conduct, and we do not give any guarantee or warranty in respect of a licensee or any related person.

1.23. This document is not a definitive interpretation of the law. It is not to be taken as a substitute for the Gas Act 1986 (as amended) or the Electricity Act 1989 (as amended), Statutory Instruments and other legal material referred to. We cannot offer legal advice on interpretation, on the type of licence you might need, or on whether you benefit from an exemption or exception. We suggest you seek your own legal advice.

1.24. Once a licence is granted, the new licensee must comply with the standard licence conditions ("SLCs") applicable to the type of licence granted. These can be viewed on our website: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence->

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and Gas Acts, ie two licences are issued in a single document, referred to as the Data Communications Company (DCC) licence. The relevant Regulations set out the procedural steps of the competitive tender application process for the DCC Licence to be used on each occasion it is awarded.

<sup>20</sup> In line with the considerations set out in chapter 3.

[conditions](#). You must read the applicable licence conditions prior to submitting a licence application.

1.25. Under the SLCs, licensees are obliged to comply with various industry codes: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-codes>. You should contact the relevant code bodies to discuss becoming a code party and compliance, prior to applying for a licence.

## Questions and feedback

1.26. We hope this guidance is clear and easy to follow. Please send any general feedback comments to [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk).

1.27. If you have any questions about your application that are not answered in the document, please contact us by email. We aim to respond to emails within 10 working days.



## 2. Information for all applicants

### Section summary

This section provides information on when to apply for a licence, the timings involved in processing different licence applications, and a high level overview of the licence application process.

### Making your application

2.1. All applications must be made to Ofgem in writing in the prescribed form, and must be accompanied by the applicable application fee. The prescribed form is set out in the Applications Regulations and Word versions of the application forms are available on our website: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/application-process>.

2.2. Applications can be sent by email to [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk) or by post to: Licensing, Ofgem, 10 South Colonnade, London E14 4PU.

2.3. The Applications Regulations also prescribe the applicable application fees. Fees can be paid by cheque made payable to OFGEM, or by bank transfer (using the applicant's name as the reference) via BACS or CHAPS to:

Bank Name: National Westminster Bank

Account name: OFGEM

Sort code: 60-70-80

Account number: 10006001

BIC: NWBKGB2L

IBAN: GB16NWBK60708010006001

2.4. We will not begin consideration of an application until we have confirmation that the applicable fee is paid. If paying by BACS or CHAPS please notify us of the method and date of payment when submitting your application.

2.5. Please ensure that copies of the documents requested in the application form are included when you send it to us. Failure to provide these will delay your application.

2.6. Copies of the applicant's certificate of incorporation (or equivalent) and VAT registration certificate are required, and these must be certified for authenticity. We request certified copies due to consumer protection reasons.<sup>21</sup> If the relevant documents are not in English, we may request that certified translations are provided.

2.7. If any mandatory questions are left blank this will delay your application. If your answer would be none, or you feel that a question does not apply to you, please write 'none' or 'N/A' in response as appropriate.

### **When to apply**

2.8. You should apply for a licence when you are getting close to being ready to carry out the licensable activity.

2.9. Each licence contains revocation provisions, and we may – at our discretion – revoke a licence if the licensable activity does not commence within the stated timeframe. This is 12 months for supply and shipper licences, and three years for other licence types.

2.10. Notwithstanding the above, you are advised to take note of the relevant processing time periods for each application type (below), and ensure that you allow sufficient time for your application to be considered.

### **Tiered process**

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<sup>21</sup> In the case of overseas applicants, this enables us to verify company details that may not otherwise be readily accessible. If company details are readily verifiable by independent means, we may decide to waive the requirement for the certificate of incorporation to be certified. However, persons with due authority to make a licence application are expected to be able to provide certified copies of original documentation.

2.11. We adopt a risk-based approach to licence applications. All applicants must complete all of the information required under Tier 1 of the application form, including the relevant licence-specific information.

2.12. Tier 1 questions ask for core information about the applicant, including the persons involved, the applicant's plans to commence the licensable activity, and any relevant licence-specific information that is required.

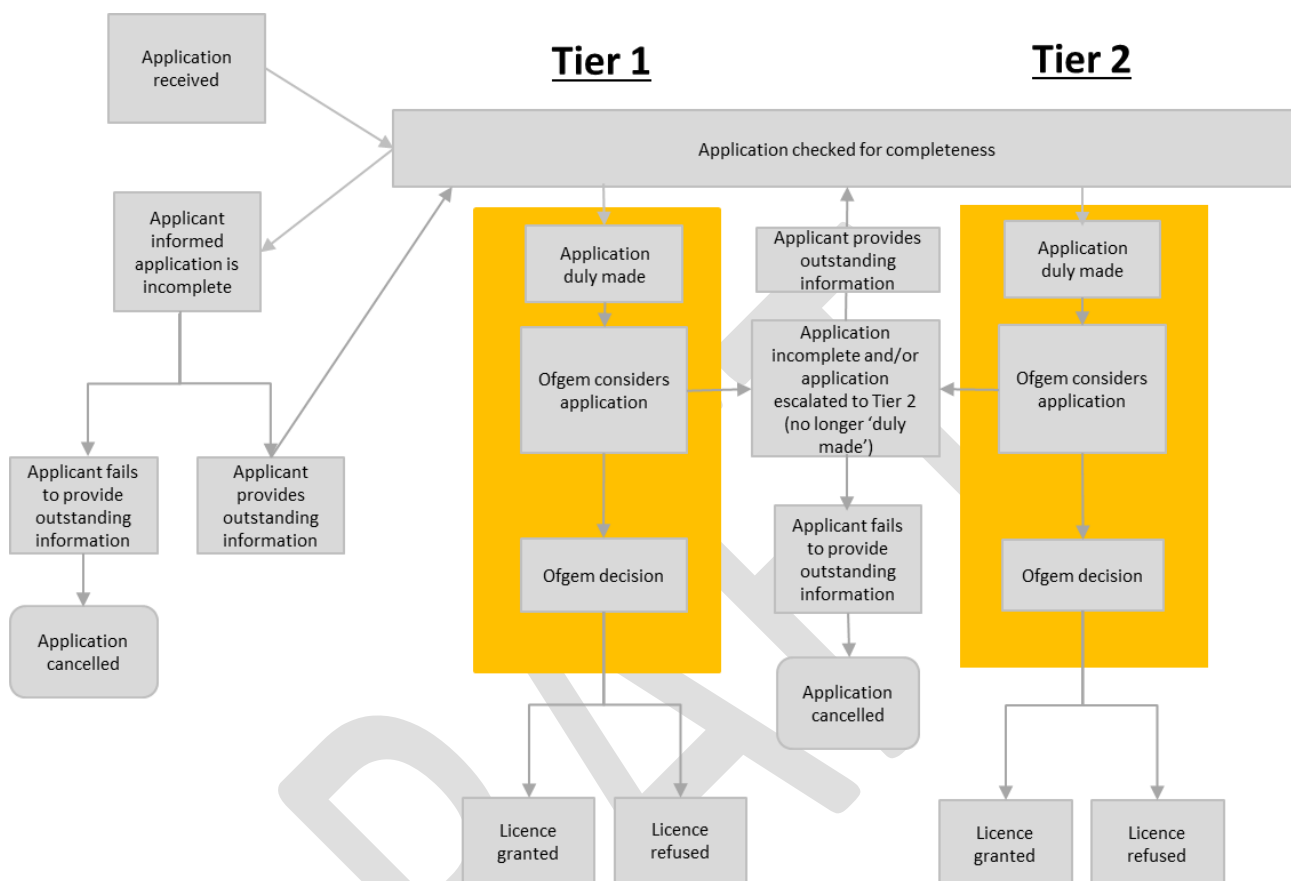
2.13. We will conduct an initial risk assessment on receipt of the application and review/build on this throughout the application process. As a result of our risk assessment, we may – at any stage during the application process<sup>22</sup> – write to tell you that we will process the application under Tier 2. The information requirements under the Tier 2 section of the application form should therefore only be completed if requested by Ofgem.

2.14. For the avoidance of doubt it should be noted that an application does not necessarily need to have progressed through Tier 2 before a licence may be refused. A licence application may be refused at any time in the application process where we consider it does not meet the general criteria, or where applicable, any specific criteria for licence grant.

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<sup>22</sup> Including, prior to any initial confirmation of the application being duly made.

**Figure 1: Overview of Ofgem’s tiered risk-based licence application process**



## What happens next

2.15. All application correspondence will be via email to the person named on the application form as the Application Contact.<sup>23</sup>

2.16. We will write to you to confirm receipt of the application, usually within two working days.

<sup>23</sup> If for any reason you wish for us to send correspondence via post, please let us know.

2.17. We will then undertake an initial check of the application to ensure that all Tier 1 information (including the licence-specific section, as appropriate) has been completed, and that copies of the required documents have been provided together with payment of the fee.

### **'Duly made'**

2.18. Following our initial check of the application we will write to you – usually within 10-15 working days from the acknowledgement of the application – to advise that either:

- we consider the application to be complete and is therefore 'duly made'. Only when we have confirmed an application is duly made will the applicable time period for processing the application commence (see below). When we advise you that the application is duly made, we will provide a template notice of application (see below); or
- the application is incomplete and therefore 'not duly made'. In which case we will tell the applicant what information/documentation we require in order for the application to be considered duly made. We will not process the application if it is not duly made.

2.19. At any time during the processing of the application, we may contact you to advise that we no longer consider the application to be duly made, and outline what steps are required to rectify this. This may typically happen if we find that information is inaccurate, incomplete, or insufficient, or if we decide to process the application as Tier 2, therefore giving rise to additional requirements.

2.20. What happens if the application becomes 'not duly made' during the processing time period is explained below.

## The processing 'time period'

2.21. When an application is duly made the relevant time period for processing the application commences.<sup>24</sup> For avoidance of doubt, 'day 1' of the time period is the first working day<sup>25</sup> after the date of our 'duly made' notification.

2.22. The relevant time periods are below. Where licences are to be granted, we typically expect the process to be completed at least 20 working days before the end of the relevant time period<sup>26</sup> (notwithstanding any extension to the time period – see below – or where the time period may be stopped – as explained above):

Licence type	Time period
Gas or electricity supply	9 months <sup>27</sup>
Gas shipper	65 working days
Electricity generation	65 working days
Gas or electricity interconnector	65 working days
Gas Transporter	8 months <sup>28</sup>
Electricity Distribution	6 months
Electricity Transmission	6 months

<sup>24</sup> The time periods do not apply for licence transfers – see chapter 9.

<sup>25</sup> 'Working day' means any other day other than Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

<sup>26</sup> Where we propose to refuse an application, we typically require at least 20 working days for the refusal process as explained in chapter 10.

<sup>27</sup> This 9 month time period is subject to review.

<sup>28</sup> Although the process is similar, the time period is longer for gas transporter applications compared to electricity distribution because we are required to give two months' notice of a proposal to grant a gas transporter licence.

2.23. We have amended<sup>29</sup> the reasonable period for assessment of supply licence applications from 75 working days<sup>30</sup> to 9 months<sup>31</sup> to set a new timescale for assessment.<sup>32</sup> 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.<sup>33</sup>

2.24. If during the processing of the application we contact you to advise that the application is no longer duly made, we will 'stop the clock' on the processing time period. If this happens, the time period will restart from zero days once we confirm that the application is duly made again. This does not necessarily mean that we will require the full time period to reach a decision, however you are strongly advised to ensure that as far as possible you 'get it right first time' by providing full and accurate information to avoid any delays to your application being processed.

2.25. Should you fail to provide the additional information/documentation requested by us, within the timeframe that we set,<sup>34</sup> your application may be cancelled.<sup>35</sup>

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<sup>29</sup> Refer to: *Supply Licence Applications: Reasons for the decision to amend the time period for assessment and to remove tacit authorisation*, published on 15 December 2021

<https://www.ofgem.gov.uk/publications/supply-licence-applications-reasons-decision-amend-time-period-assessment-and-remove-tacit-authorisation>

<sup>30</sup> As previously published in our earlier version of our application guidance.

<sup>31</sup> Subject to review.

<sup>32</sup> 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.

<sup>33</sup> This has changed as a result of the unprecedented situation and details of the reasons are set out in the decision document: *Supply Licence Applications: Reasons for the decision to amend the time period for assessment and to remove tacit authorisation*, published on 15 December 2021

<https://www.ofgem.gov.uk/publications/supply-licence-applications-reasons-decision-amend-time-period-assessment-and-remove-tacit-authorisation>

<sup>34</sup> Which we may agree with you in advance.

<sup>35</sup> An application that fails to satisfy the application procedures and formalities will be rejected. We use the word 'cancelled' instead of 'rejected' in this guidance to avoid any potential confusion with the application 'refusal' process – see chapter 10.

2.26. The relevant time period may be extended by Ofgem once, for a period of time specified by us.<sup>36</sup> Circumstances where this may happen include:

- where the application raises significant policy or consumer protection issues that require careful consideration,<sup>37</sup> or
- we propose to make modifications to the licence conditions on grant. We are required to consult on proposed modifications.<sup>38</sup>

2.27. In all such cases, we will contact you as soon as reasonably practicable after it becomes apparent that the time period will be extended. We will confirm the reason for the extension and how long the extension will be in writing.

### **Tacit authorisation<sup>39</sup>**

2.28. A **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 lapsed<sup>40</sup> if no decision has been made within the time period.<sup>41</sup>

2.29. Due to overriding reasons of public interest,<sup>42</sup> tacit authorisation does not apply to applications for the above licence types in the following circumstances:

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<sup>36</sup> In accordance with Regulation 19(3) of the Provision of Services Regulations 2009.

<sup>37</sup> We may require more time to allow for additional considerations, and in certain cases we may decide to consult before making a decision on a licence application.

<sup>38</sup> s8A(3) of the Electricity Act and s8(4) of the Gas Act require us to consult before making modifications to a licence on grant.

<sup>39</sup> Regulation 19 of the Provision of Services Regulations 2009 allows for different arrangements to apply (instead of Tacit Authorisation) where it is justified in the public interest.

<sup>40</sup> 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.

<sup>41</sup> In accordance with Regulation 19(5) of the Provision of Services Regulations 2009.

<sup>42</sup> The issuing of a licence on non-standard terms requires careful consideration and may raise consumer protection issues.



- where any modifications to the licence conditions have been requested,<sup>43</sup> or
- where the applicant is requesting any variation from standard terms; including,
  - for electricity supply licences, where the applicant has applied for a 'licence lite' direction under SLC 11.3,<sup>44</sup> or
  - for interconnector licences, where any exemption from certain conditions is requested.<sup>45</sup>

2.30. Any licence deemed to have been granted by tacit authorisation is on the same terms and conditions as those expressly granted. In other words, the same terms, licence conditions and schedules (including but not limited to the relevant SLC and revocation schedules) apply to a deemed licence as they would in an expressly granted licence of that type as it would be usually granted by us.

2.31. Due to overriding reasons of public interest, tacit authorisation does not apply to **transmission, distribution or transporter** licence applications under any circumstances. This is because network licences operate as a monopoly and there are significant consumer implications if there was a network failure, ultimately threatening the security of supply of those connected to it.

2.32. 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.<sup>46</sup> We are taking these steps to protect consumers on public interest grounds. It will

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<sup>43</sup> Under s8A(2) of the Electricity Act and s8(3) of the Gas Act.

<sup>44</sup> See chapter 4.

<sup>45</sup> SLC 9, 10 and 11 of the Electricity Interconnector licence and SLC 10 and 11 of the Gas Interconnector licence.

<sup>46</sup> Refer to: <https://www.ofgem.gov.uk/publications/rising-wholesale-energy-prices-and-implications-regulatory-framework> and *Supply Licence Applications: Reasons for the decision to amend the time period for assessment and to remove tacit authorisation*, published on 15 December 2021 <https://www.ofgem.gov.uk/publications/supply-licence-applications-reasons-decision-amend-time-period-assessment-and-remove-tacit-authorisation>

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.

### **Withdrawing an application**

2.33. If you decide not to proceed with your application you may withdraw it at any time. If you later change your mind and wish to proceed, you would need to submit a new application form and fee.

### **Notice of application**

2.34. The Acts<sup>47</sup> require applicants for a gas or electricity licence to publish notice of their application. The Applications Regulations stipulate that this must be done within 10 working days of our notification that your application is duly made.

2.35. We will facilitate this process by providing a template notice of application<sup>48</sup> for you to complete and by publishing this notice on our website. You may alternatively choose to publish the notice on your own website, in which case you must inform us and provide us with a link to the notice, which we will also place on the Ofgem website.

2.36. If the application is for a restriction, you must also publish notice in such newspapers as are best calculated to circulate it throughout the area affected by the proposed restriction.

2.37. If you fail to send us the completed notice within 10 working days, we will stop the clock on the processing time period and the application may be cancelled. This would mean

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<sup>47</sup> Section 7(2) of the Gas Act 1986 and section 11A(2) of the Electricity Act 1989.

<sup>48</sup> While the publication of the notice remains the applicant's responsibility, the notice should provide certain minimum information.

that if you still wanted a licence, you would have to re-apply and start the process again, including payment of the relevant fee.

2.38. Where we receive representations about a licence application in response to an application notice, we will consider whether they are relevant to our application assessment criteria.

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### 3. General information requirements and assessment criteria

#### Section summary

This section provides information on our approach to assessing licence applications, the general information requirements, and how an application may move from Tier 1 to Tier 2 following our risk assessment.

#### Overview

3.1. We carry out checks and make enquiries that we consider relevant to our decision to grant a licence, taking account of our duties as set out in chapter 1. Our assessment checks and criteria are non-discriminatory and follow a risk-based approach.

3.2. In broad terms the risk assessment of applications will take into account, amongst other things:

- unexplained omissions or discrepancies between the information provided in the application and the relevant company registry or other official sources, or, difficulty verifying information provided;
- readiness/intent to use the licence for the purpose for which it would be granted;
- the applicant's suitability to hold a licence;
- whether any relevant licence-specific requirements and/or criteria have been satisfactorily met; and,
- any other information relevant to our decision to grant a licence which comes to, or is brought to, our attention during the course of the application process.

3.3. Applications may be considered higher risk if information submitted or gained raises questions or concerns (including by omission). We may require more information or a face-to-face interview in order to assess whether the licence should be granted.

3.4. Our risk assessment template can be found in Appendix 1. In each area of our risk assessment we will consider whether the application is low, medium or high risk. If any areas of our risk assessment attract a high risk rating, or there are multiple medium risk ratings,

we may contact you to advise that we will process your application as Tier 2 and that further information is required.<sup>49</sup>

3.5. In some cases, we may first seek clarification or explanation from applicants in respect of discrepancies or questions raised without formally escalating the application to Tier 2. For example, if your application receives a higher risk score for a query or omission which we consider could readily be resolved.

3.6. However, where satisfactory answers are not provided, or where we consider it immediately necessary to escalate the application to Tier 2 following our risk assessment, we will ask applicants to complete the Tier 2 section of the application form.

3.7. An application may be escalated to Tier 2 at any time during the application process. This includes:

- during our initial risk assessment, prior to the application being confirmed as duly made;
- at any time during the processing of the application, after the application has been confirmed as duly made. When an application is escalated to Tier 2 it will not be considered duly made until the Tier 2 section of the application has been submitted and we confirm that this information is complete.

3.8. Current wholesale market volatility has highlighted particular market risks to which electricity and gas supply and gas shipper licence applicants are exposed. Therefore, as part of our ongoing review of measures to promote financial stability in the retail market, we have made changes to the criteria in our risk assessment (see Appendix 1) to recognise the heightened risk of operating in the market. We consider it likely that more applications will fall into the Tier 2 category as a result. We recommend that all new applicants for supply and

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<sup>49</sup> For avoidance of doubt we may also decide to refuse a Tier 1 application. We are not obliged to contact you to request further information, or to escalate an application to Tier 2 prior to refusing to grant a licence.

shipper licences consider preparing their applications (with supporting documentation) for a Tier 2 review to avoid unnecessary delays while we seek further information.

~~3.8.3.9.~~ If in our view the applicant knowingly or recklessly provides incorrect information (whether or not by omission), the application may be refused (or licence revoked, if this only comes to light after the licence has been granted).<sup>50</sup> Refusal or revocation on these grounds will be taken into account in any future licence applications made by the applicant or a related party.

## Tier 1

3.9. An overview of the Tier 1 requirements for all applicants is provided below.

### Application sections 1-7:

- **Applicant and parent/ultimate holding company details**

3.10. We will seek to verify key information provided in the application. Amongst other things we check the applicant's contact details and solvency history and, where available, the applicant's trading background and any recent substantive company changes. We will carry out checks with Companies House (or the overseas equivalent if available) and other sources to verify that the information received in an application is correct.

3.11. Where the applicant has a complex corporate structure you should provide a full organogram.

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<sup>50</sup> The provision of incorrect information or false statements during the licence application process is an offence and may result in criminal proceedings being instituted under section 43 of the Gas Act 1986 (as amended) or section 59 of the Electricity Act 1989 (as amended).

- **VAT number**

3.12. We recognise that not all applicants will be registered for VAT purposes. Typically we would consider this an indicator that you are ready to commence operations. Where an applicant is registered for VAT, we will carry out checks to validate the VAT number provided.

- **Service address**

3.13. We will usually serve documents to a licensee's registered address, in accordance with the Acts.<sup>51</sup> You may provide an alternative address for the service of documents as long as that address complies with the provisions of the relevant Act.

- **Directors, major shareholders or persons in effective control**

3.14. We carry out checks on all persons named in the application, including whether they are disqualified from acting in connection with the affairs of a company, are undischarged bankrupts, or have a history of insolvency (see below re 'Suitability to hold a licence').

3.15. We check that the information provided in the form matches information held by official sources. Any discrepancies will be queried and may result in a higher risk rating. If there have been recent changes that may not yet be reflected in the public record, you are advised to explain this in a covering letter when submitting the application.

3.16. Applicants are asked to provide directors' home addresses. If we have reason to believe that the details provided do not relate to a domestic address, this may result in a higher risk rating.

**Application section 8: Licence/application history**

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<sup>51</sup> s109(2) Electricity Act 1989 and s46(1) Gas Act 1986.

3.17. We will consider whether the applicant or any related person has previously held or applied for a licence, and/or whether they have had any licence(s) revoked. We will assess whether this licensing history is relevant to our decision to grant the licence applied for.

3.18. If a previous application has been refused, or a previous licence revoked, the reasons for this may affect our decision whether to grant or refuse the licence applied for. If a licence was revoked on the licensee's request, or with the licensee's consent because it was no longer needed or being used, then this will not usually be a reason to refuse a current application.

3.19. If an applicant is related to multiple other licence holders and the relationship is unclear, we may make further enquiries to consider if this is relevant to our decision.

#### **Application section 9: Modifications to standard conditions**

3.20. This section should be completed if you are requesting any modification(s) to the standard conditions of the licence applied for.

#### **Application section 10: Suitability to hold a licence**

3.21. We will consider whether the applicant is 'fit and proper' to be granted the licence applied for. Our assessment of suitability is based on our duty to protect the interests of existing and future consumers. We will take into account any disclosures or adverse information brought to light in respect of the applicant's directors,<sup>52</sup> major shareholders, persons in effective control of the applicant, any person with significant managerial responsibility or influence who is not a director (eg a CEO), and/or directors of any parent undertaking or ultimate holding company (collectively, "relevant persons").

3.22. We understand that ~~key~~ the full managerial staff may not be in place at the time of application. The relevant disclosures must be correct at time of application and must be kept up to date throughout the application process.<sup>53</sup> There is a space on the application form to

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<sup>52</sup> Including any shadow directors within the meaning of section 251 of the Companies Act 2006.

<sup>53</sup> You must ~~also~~ update us with any changes to your application information between the application



record any person(s) who has been considered as having significant managerial responsibility or influence for the purpose of this section (if they are not already named as a director, shareholder or controller).<sup>54</sup> If there are no such individuals in addition to those named elsewhere in the application, write 'n/a' here. For the avoidance of doubt, question 10.7 should be read as requiring the disclosure of all persons of significant managerial responsibility or influence whether or not they have already been disclosed for the purposes of responses to other parts of question 10.

3.21-3.23. We regard persons of significant managerial responsibility or influence to include those individuals who hold responsibility for, or manage, key business areas, particularly regulatory compliance, financial management, trading (where applicable), operations and business strategy. This may include advisors (where their role goes beyond providing advice to company decision-makers) and, in small new entrants may include the majority of staff.

3.22-3.24. We will not automatically refuse an application where adverse disclosures are made in this section, but we will consider whether any information is relevant to our decision to grant the licence. Failure to disclose adverse information that is required by the application form at the earliest opportunity, may be taken into account when assessing the suitability to grant the licence.

3.23-3.25. In the case of any criminal convictions, we will take account of the seriousness and relevance of the crime, and how recent the conviction is.

3.24-3.26. We will make relevant checks with external sources, including – but not limited to – Companies House, the Insolvency Service and Gazettes. We will check director records

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date and the date of our decision on your application. Applicants for a supply licence should note our decision on 4 February 2022 to amend SLC 19AA, to provide for Ofgem to assess new appointments of key personnel prior to appointment. <https://www.ofgem.gov.uk/publications/decision-strengthening-milestone-assessments-and-additional-reporting-requirement>

<sup>54</sup> For avoidance of doubt 'significant managerial responsibility or influence' does not only refer to individuals who may be employees of the applicant. It refers to any individual who exerts (or will exert) significant influence over the managing or organising of the applicant's activities in accordance with the definition set out in the Applications Regulations.

and may investigate related companies to understand any relationship. Where there is evidence that a relevant person was previously a director of an insolvent company, we will consider whether the circumstances are relevant to our decision. We will consider any evidence of insolvency, bankruptcy, or County Court judgements,<sup>55</sup> to the extent these may be relevant to our decision.

~~3.25.3.27.~~ Evidence of director disqualifications may also lead to refusal.

~~3.26.3.28.~~ You must disclose if any director, shareholder or person of significant managerial responsibility or influence ~~Where any relevant person~~ was connected<sup>56</sup> to a supply company that triggered a Supplier of Last Resort (SoLR) event – including where that person was connected to that company within the 12 months leading up to the SoLR event<sup>57</sup> We may similarly ask you for involvements in a company that was treated under the Special Administration Regime (SAR). Following such disclosure we will not automatically refuse an application but this will be highly relevant to our decision whether to grant a licence, in particular where the application is for supply. We will take account of all relevant factors before reaching a decision, including the recentness of the SoLR/SAR event, whether there was material consumer or market harm caused, whether there was evidence of financial mis-management, the relevant individual's role and their engagement and co-operation with Ofgem preceding and during the SoLR/SAR event. We may use a range of information sources to verify the information provided and disclosures in this section, including publicly available sources and information we hold in accordance with our regulatory activities, statutory duties and other legislative requirements. Failure to disclose a relevant connection to a SoLR/SAR event may lead to refusal of the licence application.

~~3.27.3.29.~~ Previous Ofgem compliance or enforcement action may be relevant to our decision to grant a new licence if:

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<sup>55</sup> Or international equivalent where applicable.

<sup>56</sup> Insofar as they were a director, shareholder or had significant managerial responsibility or influence at the relevant supply company.

<sup>57</sup> If a relevant person had ended their involvement in a failed supply business shortly prior to the SoLR event, we nonetheless consider their involvement prior to that point to be a relevant consideration. The disclosure requirement therefore extends to involvement within the year leading up to the SoLR event, and not only at the time of the supplier failure/market exit itself.

- the applicant or any ~~related~~relevant person ~~holds any~~is related to any other company that holds an energy licence and is currently subject to ongoing compliance or enforcement action; or
- relevant persons were involved in serious and/or persistent compliance or enforcement action with another licensed company, particularly where the failings had significant consumer detriment or indicated financial mis-management.

~~3.28:~~3.30. You must disclose if any person of significant managerial responsibility or influence has been subject to action by any regulatory body in any jurisdiction. In respect of such actions by other regulatory bodies, any action taken by the regulatory body for energy in another jurisdiction is likely to be particularly relevant to our decision on granting a licence. More generally we will consider whether any regulatory action taken indicates potential dishonesty, lack of ability to comply with regulations, or financial mismanagement. We will also consider the details of any competition law infringements.<sup>58</sup>

~~3.29:~~3.31. In general, we expect applicants to be open and honest in their engagement with us, and to be proactive in providing relevant information. Any failure to co-operate constructively with Ofgem as the regulator during the licence application process may contribute to an assessment that the applicant is not suitable to hold a licence, given the extent and nature of the regulatory obligations that would entail and the ongoing need for a licence holder to engage co-operatively and constructively with us.

~~3.30:~~3.32. Where there is evidence that incorrect information has been provided, this may lead to the refusal of the licence application.

~~3.31:~~3.33. Our assessment of the suitability of the applicant to hold a licence will take account of the particular circumstances and merits/facts of the case. In the event that we determine an applicant is not suitable to be granted a licence, we will explain clearly the reasons for our decision.

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<sup>58</sup> Breaches of either Articles 101 or 102 of the Treaty on the Functioning of the EU or Chapter I or Chapter II of the Competition Act 1998.

## Application section 11: Proposed arrangements for commencing the licensable activity

~~3.32.~~3.34. We will consider the details provided to gauge your readiness and intent to commence the licensable activity, and your understanding of the necessary steps and requirements before the licensable activity can commence. Applicants must be able to demonstrate clear intention to begin the licensable activity within a reasonable timeframe if the licence is granted.<sup>59</sup>

3.35. You should set out clearly the progress you have made, and further steps to be completed, towards your commencement of the licensable activity with key dates/timeframes. For example, steps taken to ensure the company has available or will have available by commencement of licensed activities the internal capability, financial arrangements, systems and processes to meet its licence obligations, -industry code accessions, steps taken to make your IT systems operationally ready (including system testing under industry codes), ~~and/or~~ information about necessary infrastructure (where applicable) and/or appointment of required staff and other resources.

~~3.33.~~3.36. We may consider whether the details provided indicate that the applicant is suitable to become bound by the relevant licence conditions that would apply upon commencement of the licensable activity. In particular, we may consider whether the arrangements proposed by supply applicants would be consistent with the Financial Responsibility Principle and the Operational Capability Principle and their associated guidance that they may become subject to.<sup>60</sup> This will be considered in addition to the assessment of any licence-specific criteria.

## Licence-specific information

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<sup>59</sup> There is a separate and distinct requirement for supply licence applicants to outline their proposed plans *after* they have commenced supply. This is part of the licence-specific assessment that we undertake for potential suppliers, as set out in chapter 4.

<sup>60</sup> Applicants for supply or shipper licences should note the consultation on changes to guidance on the supplier Financial Responsibility Principle and Operational Capability Principle, published on 28 January 2022: Update to action plan on retail financial resilience: supplier control over material assets | Ofgem

~~3.34~~~~3.37~~. For each type of licence except electricity generation licences there are specific information requirements which applicants must provide under Tier 1. Guidance in respect of the licence-specific requirements is provided in the following chapters. There is no additional guidance for the gas shipper licence-specific requirements.

## Tier 2

~~3.35~~~~3.38~~. The Tier 2 section of the application form is to be completed if requested by Ofgem following our risk assessment.

### Question 1: Certified copies of official documents

~~3.36~~~~3.39~~. We would expect applicants to hold official documentation that confirms key details provided in the application. For example, we would expect applicants to be able to provide certified copy documentation that confirms the current directors or shareholders of the applicant.

### Question 2: Evidence of contact with industry code bodies

~~3.37~~~~3.40~~. A licensee is required by licence conditions to become a signatory/party to certain industry codes and agreements. An applicant that cannot provide evidence of substantive contact with relevant code bodies with a view to completing this requirement as soon as possible after a licence is granted is more likely to receive a higher risk rating.

~~3.38~~~~3.41~~. Applicants for electricity supply licences should be aware that the industry code entry testing requirements<sup>61</sup> take several months to complete. Both gas and electricity suppliers are also required to be DCC users.<sup>62</sup> You should therefore have made progress with these requirements prior to making your licence application. See chapter 4 for further information.

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<sup>61</sup> Under the Balancing and Settlement Code (BSC), administered by Elexon, and Master Registration Agreement (MRA) administered by Genserv.

<sup>62</sup> DCC is the Data Communications Company. Participants must first accede to the Smart Energy Code (SEC) <https://smartenergycodecompany.co.uk/becoming-a-sec-party/>

### Question 3: Details of applicant's bank, solicitors and auditors

~~3.39.~~3.42. We accept that a newly formed company may not necessarily have appointed auditors and will take this into consideration. We would however expect an established company to be able to provide its banks' and solicitors' details.

### Question 4: Request to attend interview

3.43. We will advise you if we consider it necessary to interview you as part of the application process. ~~We may meet with Tier 2 applicants to make further enquiries and address any questions or concerns that have resulted in the application being scored as higher risk. At minimum we would expect Directors of the applicant company to attend any interview. We may also request attendance of other relevant persons named in the application.~~

~~3.40.~~3.44. The interview will cover in greater detail the requirements in the application form focusing on areas of particular risk as assessed by Ofgem. It may also be an opportunity for individuals involved in the management of the applicant to demonstrate to Ofgem that they are fit and proper, and suitable to hold a licence.

### Question 5: Additional supporting documents

3.45. We may request additional documentation, including ID documents, CVs of relevant people, meeting minutes, and annual accounts (as listed in the application form). We might not require all of these documents in all cases, and will request them where we consider it relevant to our decision on the application. The onus, however, remains on applicants to provide us with all information relevant to their application.

~~3.41.~~3.46. If we request applicants to provide CVs for relevant persons, these should cover at least the past 10 years. CVs must list all positions held, clearly outlining primary duties and responsibilities, and identify which (if any) positions were held within organisations that are/were licensed by Ofgem or regulated by another body in any jurisdiction.

~~3.42.~~3.47. Applicants may also be asked to evidence the accuracy of their 'suitability' disclosures. Applicants may be asked to provide a Disclosure and Barring Service or Disclosure Scotland certificate (or equivalent for overseas applicants) for relevant persons.

## 4. Gas and electricity supply applications

### Section summary

This section outlines our approach to the assessment of gas and electricity supply licence applications, including the criteria we apply and the relevant information requirements.

**\*\*\*To be aware: Following the publication of the open letter to energy suppliers on 29 October 2021<sup>63</sup> and the action plan on retail financial resilience published on 15 December 2021<sup>64</sup> 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. We are consulting on updates to the guidance as a whole, including to this section. However, prospective applicants should be aware that we are continuing to review the application process and requirements in line with the published action plan, and we will publish further updates and consultations in due course.~~ \*\*\***

### Licence specific information and requirements

4.1. Our Supplier Licensing Review<sup>65</sup> strengthened our licensing regime for suppliers, to raise standards around financial resilience and customer service.

4.2. Energy is an essential service and we expect suppliers to focus on delivering good outcomes for all customers, including the vulnerable. We apply increased scrutiny to supply licence applicants to assess whether they are adequately prepared and resourced to operate

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<sup>63</sup> [https://www.ofgem.gov.uk/sites/default/files/2021-10/20211028%20-%20JB%20open%20letter%20to%20suppliers\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/2021-10/20211028%20-%20JB%20open%20letter%20to%20suppliers_0.pdf)

<sup>64</sup> <https://www.ofgem.gov.uk/publications/action-plan-retail-financial-resilience>

<sup>65</sup> <https://www.ofgem.gov.uk/publications-and-updates/supplier-licensing-review-final-proposals-entry-requirements>

in the energy supply markets before they are granted a licence. We do this by requiring applicants to submit details about their market entry plans.

4.3. Prior to submitting any application for a supply licence, you should ensure that you have fully researched the processes involved in market operation, and have a sound understanding of the regulatory obligations that would apply to you as an energy supplier.

4.4. We recently published a series of supply licence guides which are intended to help stakeholders navigate the licence conditions and understand the licence and other obligations on energy suppliers. These guides are published on our website<sup>66</sup> along with a table listing other documents published by Ofgem<sup>67</sup> that may help potential entrants better understand the supply licence obligations. These resources are intended as helpful tools only, and do not modify or replace the electricity and gas supply licence conditions.

### **Supporting innovation**

4.5. If you propose to enter the supply market with an innovative or significantly different offering or approach, we recommend first making contact with Ofgem's Innovation Link. The Innovation Link was created to provide support to innovators on navigating and understanding energy regulation. Please find further information on our website<sup>68</sup> and contact our Innovation Link team at [InnovationLink@ofgem.gov.uk](mailto:InnovationLink@ofgem.gov.uk).

### **Timing of licensing for suppliers**

4.6. In chapter 2, we explain that licences should be applied for when the applicant is getting close to being ready to commence the licensable activity. This is particularly important for supply applications, in order that you are able to provide information about your market entry plans with sufficient clarity to demonstrate that you satisfy the supply licence application criteria, below.

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<sup>66</sup> <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/guides-supply-licences>

<sup>67</sup> <https://www.ofgem.gov.uk/publications-and-updates/consolidated-list-documents-help-you-understand-supply-licence-obligations>

<sup>68</sup> <https://www.ofgem.gov.uk/about-us/how-we-engage/innovation-link>



4.7. Applicants for an electricity supply licence are therefore expected to have made progress with the BSC and ~~MR~~**A**~~REC~~ entry testing processes prior to making their application. Both gas and electricity suppliers are also required under the licence conditions to be DCC users. These processes can typically take 6-12 months to complete. Information about the industry codes and contact details for the relevant code bodies can be found here: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-codes>.

### **Non-domestic / Domestic and non-domestic applications**

4.8. Applicants proposing to supply only non-domestic premises in the near term, but who may want to supply domestic premises later, should consider whether they would be able to provide sufficient information in relation to their plans for the domestic licence in order to meet the application criteria (below). If you do not have any specific or immediate plans to supply domestic customers, even if you might wish to do so in the future, you should consider applying for a non-domestic only licence and then apply for an extension to include domestic premises at a later date, if appropriate.

### **Our approach to assessment**

4.9. We expect energy suppliers to take regulation, and their responsibilities, seriously. Any company entering the market needs to be well-prepared and appropriately resourced. You must provide us with sufficient information to enable us to make a qualitative risk-based assessment against the following three criteria:

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

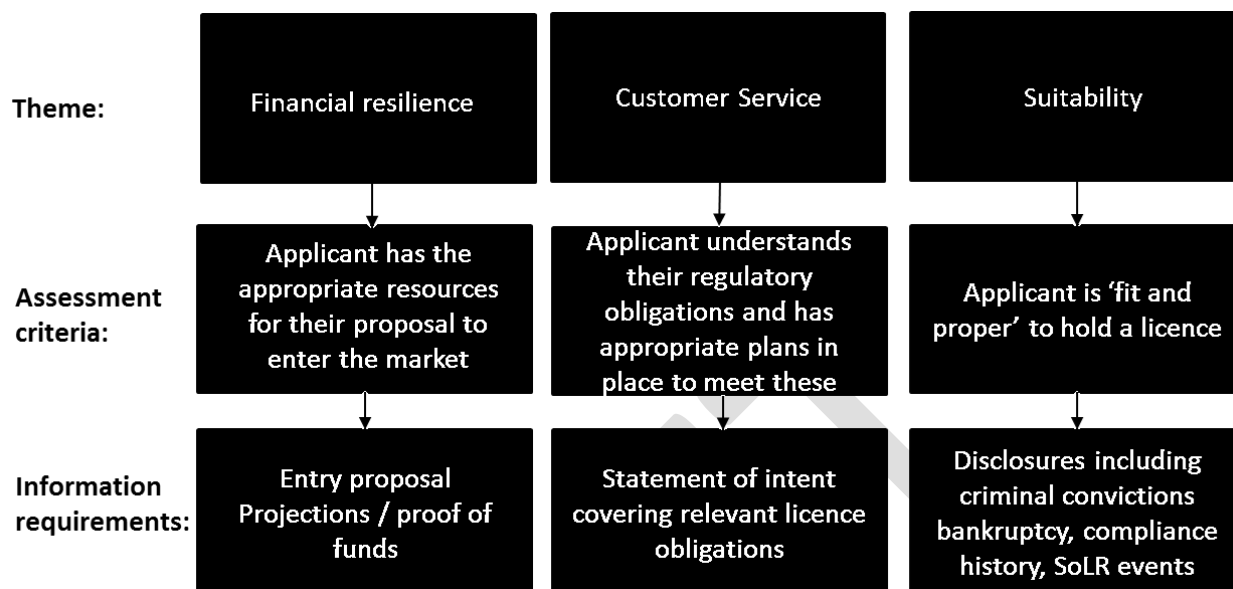
4.10. There is a positive obligation on applicants to show us that they satisfy the application criteria. We will review the information provided and consider the nature and likely impact of any perceived risks to inform our decision-making process. Our risk-based assessment may

lead to the refusal of a licence application. Where a licence is granted, our risk assessment may inform the level and nature of our ongoing engagement and monitoring with the licensee.

4.11. The above criteria were established following our Supplier Licensing Review. We set out four overarching principles to guide our Supplier Licensing Review reforms, and these remain key considerations for our assessment of supply licence applications. Specifically:

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

**Figure 2: Overview of supply licence application requirements**



4.12. Ofgem's licensing process is a point in time assessment. We request information on applicants' plans to enter the market, including their financial projections and proposed funding for their first two years' operating in the market. The information that applicants must provide enables us to gain a broad understanding of their intentions, and qualitatively assess whether they have made the requisite preparations to become a supplier and that they have plans to manage key risks of operating in the energy market in a responsible way.

### **What our licensing process does not do**

4.13. We do not assess entrants' business plans for viability or profitability, nor do we undertake a quantitative financial assessment or any financial modelling. Our granting of a licence does not mean Ofgem has in any way approved or assured the business model, as this is an entirely commercial matter for shareholders, directors and senior management

4.14. It is the responsibility of the applicant's directors to properly assess that they have adequate resources and have completed due diligence for their business. Any consideration of the applicant's resources that may be applied by Ofgem is solely in the context of the licence application process and is no substitute whatsoever for the applicant's own due diligence, nor does it provide any form of warranty. Under no circumstances should the granting of a licence

be considered by third parties as a form of assurance in respect of the future prospects or conduct of the licensee.

### **General assessment approach**

4.15. We risk assess the applicant's responses to the application questions based on objective considerations and exercise of reasonable judgement. We will, amongst other things, check that the information provided is consistent across the different questions and criteria.

4.16. We adopt a proportionate and flexible approach, recognising that all businesses are different. The supply licence application criteria do not prohibit innovative and new business propositions.

4.17. Where our risk assessment identifies potential concerns, you may need to provide us with additional information or evidence to satisfy us that you meet the application criteria. We will work with applicants to the extent possible to ensure that we provide clear guidance on the application requirements, however, it is not our role to provide consultative support to entrants. If further information we request is not provided or the information returned remains unsatisfactory, the application may be refused. It should also be noted that we are not obliged to contact applicants. Unclear or missing information may adversely impact the decision to grant a licence. Applicants are therefore advised to 'get it right first time'.

4.18. We understand that some information provided may only be indicative until a supply licence has been granted and operations commence. For example, certain funding arrangements, signing of contracts, or recruitment of certain staff may not be possible until after the licence is granted. Our application criteria are not intended to be prohibitive in this regard. We will examine your intentions and – for example – provisional or conditional arrangements where necessary. For the avoidance of doubt, applicants should include the names of any relevant people or organisations with whom provisional or conditional offers or agreements (whether for employment, services or for the provision of financial, operational or other resources) have been made in the relevant sections of the application form.

4.19. Where applicants are using a third party to support their entry into the supply market, we acknowledge there is a risk that applicants may submit 'stock' replies in response to certain application questions, particularly in respect of regulatory obligations. We do not

consider it problematic in itself that a third party may assist with an applicant's licence application and provide guidance in this area. However, if we identify that template responses have been provided, this will contribute toward a higher risk assessment score. We may make further enquiries with the applicant to ensure that they are embedding that narrative into their business.

4.20. We consider it essential for a potential new entrant to engage openly with us through the licence application process. If you are not open and transparent with us during the application process, this will count against you in our assessment of suitability to hold a licence.

## **Detailed information requirements**

4.21. Applicants are required to provide information about their proposed supply business as context for their declared resourcing arrangements and arrangements for compliance with their licence obligations.

4.22. The minimum information we require is detailed below, and must be provided for the first two years' trading operation. We expect to see detailed information for year one, and anticipate that information and assumptions for year two will be higher level. We explain how this information will be assessed against the criteria.

### **Criteria 1: The applicant has the appropriate resources for their proposal to enter the market**

4.23. We will consider whether you have made appropriate preparations for operating in the supply market and that your plans are based on relevant and reasonable assumptions. You

must demonstrate that you have given due regard to managing your risks and provide details of your operational capabilities.

4.24. You are required to provide proof of your initial funding to at least the end of your first year operating as a supplier.<sup>69</sup> To support your submission you must additionally provide a signed declaration of adequacy, as explained below.

4.25. Ofgem does not prescribe the minimum or optimum level of resources required to operate in the supply market. We will consider the arrangements you have made (or are making), in the context of the market entry plans described, and whether your assumptions appear reasonable. In particular, we will consider:

- whether you can demonstrate that you have funding for your proposal to enter the market and manage the risks that your business might prudently expect to face, without relying on customer credit balances; and
- whether you have a plan to maintain financial and operational capacity and manage your risks as your business grows – including consideration of hedging and managing your cashflows, and arrangements which will give you sufficient control over the material economic and operational assets needed to run your business.<sup>70</sup>

4.26. Below we provide further commentary on the information we expect applicants to provide.

Proposed plans for your first two years' operation in the supply market

- *Your core operational functions and processes*

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<sup>69</sup> See below.

<sup>70</sup> Applicants for supply or shipper licences should note the consultation on changes to guidance on the supplier Financial Responsibility Principle and Operational Capability Principle, published on 28 January 2022: Update to action plan on retail financial resilience: supplier control over material assets | Ofgem

4.27. You should explain your proposed business functions and how they will be resourced, including details of any outsourced functions. You should make clear how you intend to scale your customer service function against your projected growth, showing how you have given due regard to maintaining customer service standards, particularly – for domestic supply applicants – with reference to how you will identify and serve customers in vulnerable circumstances.

4.28. You should include details of any outsourced functions and what oversight / controls are being put in place to ensure that those third parties deliver the required service to the required standard.<sup>71</sup> You should be mindful of your requirement to comply with the Operational Capability Principle<sup>72</sup> if a licence is granted.

4.29. For all core functions, you should provide: high level details of the main responsibilities of each function, the names/capacity of key personnel already in place, and the number of staff forecast in each business function as at market entry, and during your initial two-year period of growth.

4.30. This information helps us to understand the structure of your operations and how these functions will be managed.

- *Target customer base and expected rate of growth*

4.31. You should provide details of your target customer base and expected rate of growth, and whether you propose to have a unique selling point (USP) or target a specific group of customers or niche segment. This information helps us understand the nature of the proposed supply business and which licence conditions will be of particular relevance (for example, if a non-domestic only applicant intends to supply microbusinesses).

4.32. Ambitious or aggressive growth projections may be considered higher risk. You are advised to ensure that clear evidence of financial and operational capacity to support your

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<sup>71</sup> Licensees remain responsible for any outsourced functions

<sup>72</sup> See SLC 4A of the electricity and gas supply licences. Also note our proposal to publish additional guidance on the Operational Capability Principle, published 28 January 2022: Update to action plan on retail financial resilience: supplier control over material assets | Ofgem

growth aspirations is provided. If issued a supply licence, you will be required to undertake assessments at key customer acquisition milestones, where we will reassess your resourcing and operational capacity.<sup>73</sup> Applicants should note Ofgem’s recent amendments to SLC 28C, requiring suppliers that have reached their domestic customer acquisition milestones (50,000 and 200,000) to temporarily pause domestic customer onboarding until such time as Ofgem have completed any necessary milestone assessment.<sup>74</sup>

- *IT systems*

4.33. You should provide information about your IT systems and integration testing, including switching,<sup>75</sup> billing and Customer Relationship Management (CRM), and how IT is integrated into the business and the growth strategy. You should be aware of the impact your growth plans could have on your systems and customer service capability, including how you will identify, record and manage customers who are in a vulnerable situation to ensure that these customers are treated fairly. This should include – if applying for a domestic supply licence – how you will set up and maintain a Priority Services Register.

- *Pricing strategy, tariffs and products*

4.34. We want to understand how you will position your supply business in the market, including how you intend to grow the business and manage the associated risks. You should provide details of your pricing strategy and highlight if plans are considered reflective of costs. If not, you must make clear how the risks associated with a loss-leading tariff are to be

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<sup>73</sup> [Milestone assessment guidance \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/milestone-assessment-guidance)

<sup>74</sup> [Decision on strengthening milestone assessments and additional reporting requirements, published 4 February 2022, https://www.ofgem.gov.uk/publications/decision-strengthening-milestone-assessments-and-additional-reporting-requirements](https://www.ofgem.gov.uk/publications/decision-strengthening-milestone-assessments-and-additional-reporting-requirements)

<sup>75</sup> Applicants should be speaking to Ofgem’s Switching Programme team to understand their requirements to be able to operate under the new faster switching arrangements. These are expected to be operational from mid-2021. For further information on the Switching Programme, including on expectations for design, build and testing of systems to meet the new switching requirements, please contact: [switchingprogramme@ofgem.gov.uk](mailto:switchingprogramme@ofgem.gov.uk)



mitigated, and demonstrate that you have sufficient funding to cover the expected costs of this strategy.

- *Projected volume of energy and purchasing strategy*

4.35. You should provide an indication of the amount of energy to be supplied and your strategy to buy this energy. This should include details of who will be trading on your behalf (if applicable), your understanding of the market and costs/risks of your strategy, and what plans will be in place to mitigate your wholesale and imbalance risk.

4.36. You should provide specific detail on: if/how you plan to hedge, and any reliance on the balancing market for an extended period of time; any intention to put in place purchasing agreements (and plans to deal with potential collateral requirements); if/how your approach differs by tariff type; and how often you plan to review your strategy.

4.37. We expect you to understand the demand profile of your expected future customers, and what wholesale market contracts you plan to use for your hedging as well as what percentage of your demand this covers. ~~If there is no proposed hedging strategy, y~~You must demonstrate an awareness of the associated risks and how the downside risks would be funded. This is particularly important if you are proposing to offer fixed-term tariffs without or with minimal hedging, or you plan to offer tariffs that are within the scope of a tariff cap without hedging in line with the cap methodology.

4.37-4.38. If you are applying for a gas supply licence, you should outline how you will make arrangements for gas shipping, for example whether you have or plan to apply for a gas shipping licence, if you will contract with a licensed shipper which is related to you or if you will contract with a third-party licensed shipper.

#### Financial projections

4.38-4.39. Your financial projections should demonstrate that all relevant industry costs as well as overheads have been considered, and that impacts of growth have been included. You must provide financial projections for your first two years' after commencing supply in an Excel compatible format (including profit and loss accounts, balance sheets and monthly cashflow), and highlight the projected profitability and percentage gross and net profit margins.

4.39-4.40. We understand that figures and detailed workings will change as entrants gain learning and respond to changing conditions, however we will consider whether you have demonstrated that you understand the costs you will face, including:

- costs that all businesses generally face (including HR & IT costs, professional services, sales & marketing),
- energy specific charges and collateral requirements (including wholesale costs, Capacity Market charging<sup>76</sup>, imbalance charging, network charging, smart metering and DCC costs, ombudsman scheme),
- costs resulting from the obligations under the government's renewable energy, energy efficiency and social schemes,<sup>77</sup> and
- changing costs associated with business scaling and how you plan to manage this (including additional costs from government schemes and other regulatory obligations that apply once you meet a certain number of customers).

4.40-4.41. We expect you to show your understanding of wholesale and other volatile costs, how these costs are affected by growth in customer numbers and trends in demands, and how they affect your cashflow and profit. You should also understand how collecting payments from customers in debt and/or experiencing payment difficulty might affect your costs.

4.41-4.42. Your projections should show that you understand how costs will differ across the calendar year and that you are aware of the cashflow issues this can cause and have a plan to cater for this. In particular, we are looking to see that applicants have taken into account seasonal variations in wholesale prices and energy demand. This should also include

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<sup>76</sup> As at the date this guidance is published, government's latest policy decision on arrangements for suppliers to pay Capacity Market supplier charge is here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/782657/capacity-market-technical-amendments-consultation-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782657/capacity-market-technical-amendments-consultation-government-response.pdf)

<sup>77</sup> <https://www.ofgem.gov.uk/publications-and-updates/environmental-schemes-information-independent-suppliers>

how these seasonal variations affect how and when payments are taken from customers, while complying with relevant supply licence conditions related to customer service and credit balances.

4.42-4.43. We also expect you to expressly state how you will make provision for payments under the relevant government schemes.

4.43-4.44. ~~Once licensed, you~~ you should plan to monitor the variables in your projections, and review your assumptions periodically, and foresee the impact of changing regulations once thresholds are reached. ~~Therefore we expect that your business model and supporting processes will be robust to potential changes. Even if~~ your initial two-year plan doesn't encompass key policy thresholds we will ~~as part of our assessment of your understanding of your obligations,~~ nonetheless expect that you are able to show awareness of these additional requirements. ~~If your two-year plan suggests other non-policy related threshold or other foreseeable significant changes to business costs at the end of the first two years of operation, we will expect that you are able to show awareness of these costs, how they will impact the business, and explain how the business will ensure it has sufficient financial and other resources to meet them.~~

4.44-4.45. ~~The aim of our assessment of an applicant's projections is in the context of our specific application criteria, and fundamentally to ascertain whether the applicant is knowledgeable about key costs or risks, and that they can demonstrate reasonable assumptions and appropriate controls in the context of their overall plans. We will not analyse an applicant's projections in detail or assess their viability.~~

#### Risk management strategy

4.45-4.46. You are also required to provide details of your risk management strategy ~~and evidence of stress tests conducted on the above-mentioned financial projections, again provided in an Excel compatible format.~~ We expect to see the main risk factors affecting your business clearly listed with details of what stress testing has been undertaken in line with these risks. ~~You should clearly state any assumptions that have been made.~~

4.46-4.47. ~~We do not specify the parameters for an applicant's stress test.~~ It is the applicant's responsibility to stress test their business. We would typically expect you to show that you have considered how you expect to cope with market volatility, extreme winters,

collateral/trading risks, and the impact of both slower or faster than anticipated growth. We expect you to show reasonable assumptions based on potential levels of customer churn, and how you will manage potential downside risk. We will consider whether the stress-testing applied appears to be within reasonable parameters.

#### Source and proof of funding

~~4.47-4.48.~~ Entrants should be able to clearly demonstrate how they propose to cover their early-year losses. We ask for information on your proposed funding arrangements for the first two years and proof of funding for at least your first one years' operation in the supply market. We will consider whether this appears to match your financial projections (including potential downside risks).

~~4.48-4.49.~~ Acceptable proof of funding includes, for example: cash or liquid assets, debt finance or letter of credit, guarantee from finance backer (including parent or group company guarantee), share capital/shareholder agreement, provisional<sup>78</sup> funding agreement, and/or grants. Proof of funding needs to demonstrate the amount of funding available, and clearly evidence that the applicant's funding is readily available. Where the funding comes wholly or partially from an external source, applicants must provide evidence that demonstrates how the funding will be legally transferred to the applicant, the terms and conditions of any funding (including payment terms for loans/ debt instruments), and satisfy Ofgem that the applicant is legally and readily able to access these funds.

~~4.49-4.50.~~ It is acceptable that some funding may be conditional on completing market entry steps (including licensing) but there should be no onerous conditions/limited timeframes attached to accessing the funding.

~~4.50-4.51.~~ While applicants are required to provide their first two years' of plans/projections, the requirement for proof of funding is for *at least* the first year. We consider this may be-is proportionate in some cases to avoid a potentially prohibitive threshold, which could unduly deter certain new and/or innovative businesses. However, the onus is on the applicant to show that they meet the criteria. You are therefore advised to submit two years' proof of funding if available. If only one year's proof of funds is provided

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<sup>78</sup> ~~Provisional subject to the granting of the licence(s) applied for.~~

and your application is assessed as higher risk, particularly in light of the current market volatility, we may seek further information or evidence regarding your funding as this may be a relevant factor in our decision on whether or not to grant a licence.

- *Certificate of Adequacy*

4.51-4.52. As supporting evidence for this section you should also provide a signed declaration of financial and operational adequacy for your first year operating in the supply market. The applicant's directors are responsible for properly assessing that they have adequate resources. As stated above, we do not 'approve' or provide quality assurance in respect of an applicant's business proposals or projections and it is important that this is clearly understood.

4.52-4.53. The Certificate of Adequacy should be approved by a resolution of the applicant's board of directors, affirming that they have a reasonable expectation that the applicant has sufficient financial and operational resources, and financial facilities available to it, to operate the proposed supply business for its first year's operation.<sup>79</sup>

**Criteria 2: The applicant understands their regulatory obligations and has appropriate plans in place to meet these**

4.53-4.54. As outlined above we will consider, amongst other things, your preparations to comply with the supply licence obligations including industry code accessions and payments for government schemes.

4.54-4.55. You are also specifically required to provide a 'statement of intent' in respect of compliance with your customer service-related regulations.<sup>80</sup> This application question is principally relevant to domestic supply applicants, and to non-domestic supply applicants to

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<sup>79</sup> We do not provide a template for this. If you have chosen to undertake an external review of the adequacy of your resources, you may wish to provide a summary of this with your submission.

<sup>80</sup> For the avoidance of doubt, applicants must understand and be ready to comply with their licence obligations in full if a licence is granted. We consider that a proportionate approach to assessing licence applications is required, and to deliver the main aims of our Supplier Licensing Review we believe that customer service provision should be given particular emphasis.

the extent that they will, or may, be supplying micro-businesses. However, all applicants must review this section and respond to the extent relevant.<sup>81</sup>

4.55-4.56. We expect suppliers to put the needs of consumers at the heart of their business, including the needs of vulnerable consumers. Applicants must have given sufficient forethought to their licence obligations to be able to articulate how they expect to deliver good customer outcomes, and how they will manage issues responsibly.

4.56-4.57. Below we describe areas we would expect applicants to provide a narrative on alongside any other material factors that may be particularly relevant to delivering good customer service under their specific proposal. We will consider whether you appear to have a good awareness of the relevant customer service obligations that will apply to you as a licensed supplier, and whether you can show what practical steps you are taking (or will take) to ensure you can comply with them.

4.57-4.58. We do not expect applicants to have everything in place before commencing supply, however we do expect you to:

- have knowledge and understanding of your duties under the licence, including the Standards of Conduct for domestic consumers (including the vulnerability principle) and microbusiness customers; and
- be planning (with indicative timescales) and taking steps to put relevant systems, policies and procedures in place to comply with those duties and deliver good customer outcomes.

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<sup>81</sup> A non-domestic consumer is defined as a microbusiness if they meet one of the following criteria: employs fewer than 10 employees (or their full time equivalent) and has an annual turnover or balance sheet no greater than €2 million; or uses no more than 100,000 kWh of electricity per year; or uses no more than 293,000 kWh of gas per year. A business using 100,000 kWh of electricity or 293,000 kWh of gas should typically pay around £10,000 - £12,000 a year for each fuel (excluding VAT and Climate Change Levy).

~~4.58~~4.59. Below we provide further commentary on the information we typically expect applicants to provide.

Customer service 'statement of intent'

- *Treating customers fairly*

~~4.59~~4.60. You should describe how you will treat customers fairly in line with the Standards of Conduct (including vulnerable customers, for domestic suppliers).<sup>82</sup> We expect the Standards of Conduct to be embedded throughout the organisation, be driven by the board of directors and senior management, and understood by all staff. 'Fairness' should also be embedded in the design, monitoring and revision of all relevant products and services and associated policies and processes. This is to help ensure suppliers are embodying the culture required to consistently deliver fair outcomes and better service for energy consumers. You should set out how you will ensure that any third party representatives will meet these requirements, which as the licensee, you will be accountable for.

~~4.60~~4.61. You should be able to outline how you will ensure that your products and services will meet the needs of your customer base.

- *Vulnerability*

~~4.61~~4.62. For domestic supply applicants your approach on vulnerability should be acknowledged throughout your statement of intent, as it is relevant within all customer obligations. In addition to this, you should specifically comment on how you will operationalise the vulnerability principle namely the policies and procedures you have, or will establish, to identify vulnerable customers, and how you will respond to their needs.

~~4.62~~4.63. You should tell us your plans to establish, maintain and promote a Priority Services Register.

- *Customer service operations*

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<sup>82</sup> SLC 0 and SLC 0A.

~~4.63.~~4.64. \_\_\_\_ We expect you to have planned the ratio of customer service staff to customer, considered what training will be in place for staff, and how you will maintain good standards of service as your business grows. You should tell us how you expect to capture customer feedback and take this into account, and how you will respond to changing customer needs (eg if customers become vulnerable).

~~4.64.~~4.65. \_\_\_\_ You should explain your approach to complaints handling, demonstrate your awareness and understanding of the relevant Statutory Instrument,<sup>83</sup> and have systems and resources allocated to complaint handling (including the ability for customer contact by a range of means).

~~4.65.~~4.66. \_\_\_\_ Suppliers must work with Citizens Advice, Citizens Advice Scotland and the Energy Ombudsman and are required to signpost these services to their domestic and microbusiness customers. We expect you to indicate how you will meet this requirement, and also acknowledge the costs and implications of complaint handling.

- *Acquiring and transferring customers*

~~4.66.~~4.67. \_\_\_\_ You should outline your proposed approach to customer acquisition and how you will ensure you will be compliant with the relevant provisions of the licence. For domestic suppliers this should include:

- how customers will be able to easily compare and select appropriate tariffs;
- that tariffs are only recommended which take into account, and are appropriate to, customers characteristics and/or preferences (with particular regard to vulnerable customers); and
- steps to ensure that you, or your representatives, do not mislead customers or use high pressure sales tactics.

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<sup>83</sup> <http://www.legislation.gov.uk/uksi/2008/1898/contents/made>



4.67-4.68. We expect you to provide details if you intend on undertaking any face-to-face selling, and outline what controls are in place where third party intermediaries (TPIs) are being utilised to acquire customers.

4.68-4.69. You should also have considered how you will manage customers you may acquire from outside your target group, including those that don't make an active choice (eg through change of tenancy).

4.69-4.70. For micro-business customers, you should explain how you will ensure price transparency, and the need to provide price information on your website plus at least one third party web portal.

4.70-4.71. You should describe the systems you will have in place to ensure that customers are switched in line with relevant provisions of the licence including facilitating a switch within three weeks.<sup>84</sup>

- *Customer Communications*

4.71-4.72. You should be able to provide a narrative on how you will ensure your customers are provided with sufficient information to enable them to make informed choices, including thinking about what is appropriate to customers' characteristics and preferences.

- *Payment, billing, and credit balances*

4.72-4.73. You should describe your proposed approach to offering a range of payment types, how you will provide accurate and timely billing (recognising consumer requirements, particularly for vulnerable customers), and your processes to review and refund credit balances.

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<sup>84</sup> Noting transition to the next-day switching environment (which will have a five working day switching backstop licence obligation) that will be introduced as part of the Switching Programme in 2021:

<https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme/switching-programme>

~~4.73-4.74.~~ For domestic supply applicants, if your projected growth does not exceed the pre-payment meter threshold within your initial two-year growth projections, you should nonetheless acknowledge the requirements and indicate how you will manage requirements relating to customers in payment difficulty (including considering a customer's circumstances and their ability to pay).

- *Retail price protections*

~~4.74-4.75.~~ If you are applying for a domestic supply licence, you should outline your awareness of the relevant price caps<sup>85</sup> namely the prepayment price cap and the default price cap, and how you will ensure that your tariffs and pricing will remain compliant.

- *Smart metering*

~~4.75-4.76.~~ Suppliers are required to install and serve customers with smart meters in line with government plans. You should have a clear plan for completing the DCC user entry process and be aware of your obligations regarding the installation and operation of Smart Metering Systems and In-Home Displays, and outline where you intend to use third parties to help you deliver on these obligations (metering equipment, installers etc).

~~4.76-4.77.~~ You should demonstrate an awareness of the various safety obligations, and how you intend to ensure compliance with SMICoP<sup>86</sup> including the requirements relating to non-domestic smart metering where relevant.

- *Compliance reporting*

~~4.77-4.78.~~ Suppliers are required to submit data to Ofgem on their operations. You should provide information on how you expect to comply with this reporting requirement, and indicate that you understand how you will meet your relevant obligations as these change with growth (including government schemes).

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<sup>85</sup> <https://www.ofgem.gov.uk/energy-price-caps/levels-energy-price-caps>

<sup>86</sup> The Smart Meter Installation Code of Practice (SMICoP) specifies the minimum standards suppliers must adhere to in relation to the customer facing aspects of the installation of Smart Metering Systems.

~~4.78.~~4.79. For example, suppliers are required to submit monthly and quarterly complaints data to Ofgem and Citizens Advice on domestic and non-domestic customers, including the number of complaints received, those resolved, and timing of resolution. Suppliers also submit data quarterly on social obligations, and the Guaranteed Standards of Performance for domestic and microbusiness customers.<sup>87</sup>

~~4.79.~~4.80. We engage with new entrants to provide more detailed compliance information once they commence supply, but at application stage we will look to see that you have given forethought to meeting your reporting requirements.

### **Criteria 3: The applicant is fit and proper to hold a supply licence**

~~4.80.~~4.81. We will consider applicants' suitability to hold a licence as set out in chapter 3. For supply licence applicants we will give particular consideration to the nature of the direct customer/supplier relationship.

~~4.81.~~4.82. Involvement by relevant people in a previously failed supply business will not automatically lead to refusal of a supply licence application, but it is an important and relevant factor in our decision on whether to grant a supply licence. ~~Where~~ – for example – the relevant SoLR/SAR event was recent, material consumer or market detriment was caused, the failure was associated with serious compliance failings, and/or the relevant individual(s) concerned were not co-operative with us during the SoLR/SAR process, this will be highly relevant to our decision on whether to grant a supply licence. Applicants should give a full and frank account of their position and responsibilities in a failed supply business. Failure to disclose a relevant connection with a failed supplier may be regarded as providing false or misleading information and therefore lead to refusal to grant a licence.

4.83. It is not a prerequisite that supply licence applicants must have previous energy market experience; we will make judgements based on the quality of information provided as to whether you appear to have – or have access to – the necessary capabilities to operate in the supply market. However, consideration of whether applicants have the necessary experience and capability to manage financial risks faced by a retail supply business will be a

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<sup>87</sup> <https://www.ofgem.gov.uk/licences-codes-and-standards/standards/quality-service-guaranteed-standards>

highly relevant factor that will weigh more heavily in our assessment than overall energy supply experience. If your application is processed as a Tier 2 application, we We may ask for CVs of relevant people and take their professional experience into account when making our decision.

4.82-4.84. As set out in chapter 3, we consider that persons with significant managerial responsibility or influence may include directly employed staff or certain advisors or consultants which have effective decision-making authority. For a supply business, persons with significant managerial responsibility or influence will include (but may not be limited to) any head of a business area including finance, risk, operations, technology, data, compliance, and heads of business functions, head of trading or hedging, strategy, marketing and customer relationship management. We would expect identified individuals to be able to demonstrate that they have the necessary capabilities to manage such activities. While some senior roles may not be filled at the time of application, we may consider whether the management team has sufficient breadth of experience and expertise to support the applicant's plan to commence the licensable activity (set out in section 11 of the application).

## **Other information relating to supply licence applications**

4.83-4.85. Below we provide additional guidance in relation to specified areas, gas supply through exempt pipelines,<sup>88</sup> and electricity 'licence lite'.<sup>89</sup>

### **Specified area**

4.84-4.86. Except for exceptional circumstances we will grant supply licences on a GB-wide basis. Before we apply any restriction to the geographical area of the licence we will consider whether there is an over-riding reason of public interest to do so. If for any reason you wish to request that the specified area of the licence is not 'Great Britain', you must provide a clear explanation of why you wish to have this restriction in place.

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<sup>88</sup> Also referred to as 'other than by gas transporter' licences.

<sup>89</sup> 'Licence lite' refers to a direction under SLC 11.3 of the electricity supply licence.

~~4.85-4.87.~~ We will not grant a supply licence where, in our opinion, the description or area of the premises to be supplied would artificially include in the restriction or exclude from the extension, premises likely to be owned or occupied by persons who are chronically sick, have a disability, are of pensionable age, or are likely to default in the payment of charges.<sup>90</sup>

### **Gas supply through exempt pipelines**

~~4.86-4.88.~~ We will notify the Health and Safety Executive ('HSE') of any application we receive for licences authorising the supply of gas through exempt pipelines.<sup>91</sup> We will seek confirmation from you that you have secured approval of, or are in discussions with, the HSE regarding a gas safety case.

~~4.87-4.89.~~ These licences do not contain standard licences and supply is restricted to properties named in the licence. Where there are multiple named properties (addresses) to be supplied we ask that the list of addresses is provided to us in either Word or Excel format in order that this can be copied directly into the licence if granted.

### **Directions under electricity supply SLC 11 (Compliance with Industry Codes)**

~~4.88-4.90.~~ In March 2009, as part of our work on identifying and reducing regulatory barriers to the development of Distributed Energy ('DE'), we modified SLC 11 (Compliance with Industry Codes) applicable to electricity supply licences.

~~4.89-4.91.~~ The modification allows existing and prospective electricity supply licensees to apply to the Authority for a direction under SLC 11.3 of the electricity supply licence relieving it of certain obligations (in whole or in part) to comply with specified industry codes (this is known as 'licence lite').

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<sup>90</sup> Gas Act s7A(8) - Although there is no corresponding provision in the Electricity Act. In order to protect customers and in line with our policy to align the gas and electricity markets wherever possible, we have extended this provision to apply to electricity supply licences.

<sup>91</sup> Where a gas network is exempt from the requirement to hold a gas transporter licence. For example, local authorities or universities that supply gas to premises via their own private network.

~~4.90-4.92.~~ We have published guidance<sup>92</sup> outlining the procedures for requesting a direction under SLC 11.3 as well as the eligibility and assessment criteria we will use to assess applications for a direction. Applicants seeking a direction under SLC 11.3 should refer to this guidance.

~~4.91-4.93.~~ For the avoidance of doubt, it should be noted that the time period within which we aim to reach a decision on whether or not to grant an electricity supply licence does not include making any decision on whether or not to issue a direction under SLC 11.3. If the applicant wishes for the licence application to be considered in parallel with a request for a direction under SLC 11.3, in order that any direction is made upon licence grant, tacit authorisation will not apply to the application and we will discuss with you the impact on the processing time period.

~~4.92-4.94.~~ A direction may also be made under SLC 11.1 in respect of compliance with the Grid Code and Distribution Code.

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<sup>92</sup> More information on licence lite is available on our website (here:

<https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-lite>), including our published guidance (here:

[https://www.ofgem.gov.uk/sites/default/files/docs/2015/04/licence\\_lite\\_slc\\_11.3\\_operating\\_guidance\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2015/04/licence_lite_slc_11.3_operating_guidance_0.pdf)).

## 5. Gas and electricity interconnector applications

### Section summary

This section provides the applicant with information on the additional requirements for gas and electricity interconnector licence applications. This includes information on exemption from certain requirements and proposed points of connection.

### Licence specific information and requirements

5.1. A gas interconnector licence allows the licensee to participate in the operation of a gas interconnector which is defined as:

- coordinating and directing the conveyance of gas into or through a gas interconnector; or
- making such an interconnector available for use for the conveyance of gas.

5.2. An electricity interconnector licence allows the licensee to participate in the operation of an electricity interconnector. This is defined as:

- coordinating and directing the flow of electricity into or through an electricity interconnector; or
- making such an interconnector available for use for the conveyance of electricity.

### Electricity interconnector regulation models

5.3 There are two models of electricity interconnector regulation in GB: the regulated model (cap and floor regime) and the non-regulated model (exemption from certain aspects of European legislation).

5.4 We created the cap and floor regime in order to encourage investment in electricity interconnectors and it is the regulated route for interconnector investment in GB. It strikes a balance between commercial incentives and appropriate risk mitigation for project developers.

It sets a maximum (cap) and minimum (floor) amount of revenue for an interconnector, and there is a wide band of 'merchant' exposure between the cap and the floor.<sup>93</sup>

5.5 The cap and floor regime sits alongside the exemption route, described below, to invest in interconnectors whereby project developers apply for exemptions from aspects of European legislation.

5.6 The cap and floor regime invites submissions from developers seeking to be regulated under the cap and floor regime within a time-bound application 'window'.

5.7 Our decision on whether or not to grant a project the cap and floor regime is based on our assessment of the needs case and impacts the project might have on current and future consumers and whether it is likely to be in the interests of GB consumers.

5.8 Potential interconnector projects are assessed through application 'windows' in order to ensure that any interactions and dependencies between the needs case for new interconnector projects can be taken into account in our assessment.

5.9 To date, we have run two cap and floor application windows.<sup>94</sup> Further details on the cap and floor regime, as applicable to our last application window (window 2), including key features of the regime can be found on our website.<sup>95</sup>

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<sup>93</sup> The interconnector is exposed to revenue risk between the cap and the floor, impacting returns achieved.

The width between the cap and floor is designed so that developers are exposed to the benefits provided by the interconnector and so are incentivised to identify and develop projects in a way that maximises these benefits.

<sup>94</sup> We expect to conduct a review of the need for, and timing of, any future cap and floor application windows.

<sup>95</sup> Cap and floor regime summary:

[https://www.ofgem.gov.uk/system/files/docs/2016/05/cap\\_and\\_floor\\_regime\\_summary\\_for\\_the\\_second\\_window.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/05/cap_and_floor_regime_summary_for_the_second_window.pdf)



5.10 For the avoidance of doubt, it should be noted that the grant of an electricity interconnector licence does not mean the holder of that licence is also granted the cap and floor regime. They are assessed and governed under two separate processes.

5.11 Under the alternative non-regulated model, Article 17 of Regulation (EC) 714/2009 ('the Regulation') provides that investments in new direct current interconnectors may, upon request, be exempted for a limited period of time from some or all of the following provisions in European legislation:

- **Article 16(6) of the Regulation** which governs how revenue resulting from the allocation of interconnector capacity may be used;
- **Article 9 of Directive 2009/72/EC (the Directive)**, which stipulates that the same person cannot exercise direct or indirect 'control' over a transmission system operator or transmission system and at the same time exercise direct or indirect 'control' over or have any right over an undertaking performing the functions of generation or supply; and
- **Articles 32, 37(6) and 37(10) of the Directive**, which concern requirements to offer terms for third party access and regulatory approval of charging methodologies.

5.13 For the avoidance of doubt, it should be noted that the time period within which we aim to reach a decision on whether or not to grant an interconnector licence does not include making a decision on whether or not to grant an exemption from some or all of the relevant conditions mentioned above.

5.14 The criteria and process for assessing requests for an exemption is separate to our assessment of whether or not to grant a licence. Further details on the assessment criteria for exemptions, including timescales, can be found in the Regulation.<sup>96</sup>

## Gas interconnector applications

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<sup>96</sup> Article 17 of Regulation (EC) 714/2009: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>

5.15 The gas interconnector licence contains a provision to switch off conditions relating to charging and third party access should the operator hold a relevant exemption under European law. We may also in some situations decide to modify the applicable conditions as set out in Section 8(7) of the Gas Act.

### **Proposed points of connection**

5.16 In November 2007, we published an open letter clarifying our position regarding the requirement in the Electricity Applications Regulations for licence applicants to specify the actual or proposed points of connection for a proposed interconnector.<sup>97</sup>

5.17 Applicants must, wherever possible, specify the locations of the actual substations at which the interconnector will be connected to an electricity transmission or distribution network.

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<sup>97</sup> <https://www.ofgem.gov.uk/publications-and-updates/27407-open-letter-interconnector-licence-application>

## 6. Gas transporter applications

### Section summary

This section provides applicants with information on the additional requirements for gas transporter licence applications. This includes information relating to charges and financial ring-fencing provisions, and the safe operation of transportation systems.

### Licence specific information and requirements

6.1. All gas transporters, other than the National Transmission System (NTS) and Gas Distribution Networks, are known as Independent Gas Transporters (IGTs).

6.2. For gas transporter licence applications, there is the extra procedural step of Ofgem publishing a notice of intention to grant a licence setting out our reasons. The notice period for this is two months.<sup>98</sup>

6.3. Where we receive representations about a proposal to grant a transporter licence we will consider whether they are relevant to our decision and if necessary the application may be re-assessed.

6.4. Applicants for transporter licences should be aware that amongst other things, they must comply with the requirements to publish in plain and intelligible language statements setting out their obligations under their licence conditions relating to vulnerable customers.<sup>99</sup>

### Charges and financial ring-fencing provisions

6.5. Before granting an IGT licence, we propose to make modifications to standard licence condition 4A<sup>100</sup> prior to granting such licences. We will also look to insert a special condition<sup>101</sup>

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<sup>98</sup> Gas Act s7(5).

<sup>99</sup> Conditions 17 and 18 of the Gas Transporter Licence.

<sup>100</sup> Obligations as regards Charging Methodology.

<sup>101</sup> Charging of Gas Shippers – Relative Price Control.

into the licence at grant. These two actions will mean the Relative Price Control (RPC) conditions are in effect from licence grant, in line with other existing Gas Transporter licensees.

6.6. Under the terms of the RPC mechanism, IGTs' charges are capped at a level that is broadly consistent with the charges that the Distribution Network would levy for providing similar gas transportation services.

6.7. Following grant of an IGT licence, we will also seek the licensee's consent to issue a Transportation Services Direction<sup>102</sup> to give effect to the financial ring-fencing conditions. As of March 2006, all IGTs have the financial ring-fencing conditions in effect in their licence following issue of Transportation Services Directions to those licensees. The financial ring-fencing conditions cover: restrictions on activity; the availability of adequate resources; an undertaking from their ultimate controller; the obtaining of a suitable investment grade credit rating; and indebtedness of the licensee.

### **Safe operation of transportation systems**

6.8. We will, where appropriate, consult the Health and Safety Executive (HSE) about safety issues contained in information submitted by applicants for gas transportation licences. We will also consult the HSE about any other safety matters.<sup>103</sup> An applicant for a gas transporter licence is not required to submit information about the safe operation of its proposed system. However, we will take into account any comments made by the HSE about whether it considers the system can be operated safely.

### **SLC 8 (Provision and Return of Meters)**

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<sup>102</sup> As issued by the Authority with the consent of the licensee under standard condition 2 of the gas transporter licence. A Transportation Services Direction brings into effect, in whole or in part, the standard conditions in Section C of the gas transporter licence.

[https://epr.ofgem.gov.uk/Content/Documents/Gas\\_transporter\\_SLCs\\_consolidated%20-%20Current%20Version.pdf](https://epr.ofgem.gov.uk/Content/Documents/Gas_transporter_SLCs_consolidated%20-%20Current%20Version.pdf)

<sup>103</sup> Gas Act s4A(1).

6.9. Applicants should note that once licensed, in order to comply with the requirements of this condition they will need to become an accredited Meter Asset Manager (MAM) or appoint a service provider who is accredited.<sup>104</sup>

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<sup>104</sup> SPAA: [Schedule-32-Meter-Asset-Manager-Arrangements.pdf \(spaa-cdn-1.s3.eu-west-2.amazonaws.com\)](https://spaa-cdn-1.s3.eu-west-2.amazonaws.com/Schedule-32-Meter-Asset-Manager-Arrangements.pdf)

## 7. Electricity distribution applications

### Section summary

This section provides applicants with information on the additional requirements for electricity distribution licence applications. This includes information relating to their safety and security of supplies enquiry service, financial ring-fencing and alternative arrangements, and safe operation of distribution systems.

### Licence specific information and requirements

7.1. All electricity distribution network operators other than the incumbent Distribution Network Operators (DNOs) are known as Independent Distribution Network Operators (IDNOs).

7.2. Applicants for distribution licences should be aware that amongst other things, they must comply with the requirements to publish in plain and intelligible language statements setting out their obligations under their licence conditions relating to vulnerable customers.<sup>105</sup>

### Safety and Security of Supplies Enquiry Service

7.3. Applicants must, as part of their licence application, provide details of their proposed arrangements for compliance with SLC 8 (Safety and Security of Supplies Enquiry Service). These must be approved by us before a licence is granted.

7.4. During the assessment of your proposed arrangements for compliance, we will consider whether you have demonstrated that:

- the service adequately differentiates between enquiries relating to security, availability and quality of service of the licensee's distribution system, or concerning danger or requiring urgent attention, and other enquiries. It is important to ensure that the efficiency of the service will not suffer due to large numbers of other enquiries; if any part of the establishment, operation, and

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<sup>105</sup> SLCs 9 and 10 of the Electricity Distribution Licence.

maintenance of the service is to be procured from another organisation, you must demonstrate that the contractual arrangements are adequate and the organisation has the capability to provide a satisfactory service;

- the service should be available through a wide range of communication media. These must include telephone, correspondence and personal visits. It would also be desirable to include internet and e-mail facilities. All relevant addresses and telephone numbers must be included in the statement<sup>106</sup> required by SLC 8; and
- the service must provide a telephone response service that is able to receive and process reports and enquiries at all times. Where companies operate an automated telephone answering service, simple and swift access to an operator must be available at all times. The service shall include facilities that can be used by all classes of consumer, including the disabled and the elderly, and shall be free at the point of use; and, the service should be equally effective in responding to reports and enquiries that are received direct from consumers and those received via supply businesses.

7.5. The arrangements should not discriminate between reports and enquiries received via different suppliers.

### **Financial ring-fencing and alternative arrangements**

7.6. In order to protect electricity customers, we propose to make modifications to the standard conditions of distribution licences prior to granting such licences. The modifications reflect the expectation that the standard conditions in Section B of the distribution licence will not be in effect for new applicants and that certain amended standard conditions will be inserted in an additional Section BA. The amended standard conditions refer to:

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<sup>106</sup> If the licence is granted, SLC 8.4 requires that the licensee must at all times have in force a statement approved by the Authority that sets out, in plain and intelligible language, details of the Safety and Security of Supplies Enquiry Service.

- the regulation of charging arrangements;
- credit rating of licensee; and
- restriction on indebtedness and transfers of funds.

7.7. Following consultation on this proposed modification, we may modify the standard licence conditions in the applicant's licence to such extent as we consider requisite to meet the circumstances of the particular case.<sup>107</sup>

7.8. You will need to provide details of your proposed arrangements for compliance with these amended standard conditions as part of your application.

7.9. We will need to be satisfied with your proposed arrangements to comply with SLC 31 (Undertaking from Ultimate Controller) and amended standard condition BA3 (Credit Rating of Licensee).

7.10. We have published guidance<sup>108</sup> on alternative arrangements that might better suit the circumstances of smaller companies in complying with the proposed modified licence condition relating to the Credit Rating of the Licensee. We have also published a decision document<sup>109</sup> that sets out the appropriate long term regulatory regime for IDNOs and incumbent DNOs operating outside their distribution services area.

### **Safe operation of distribution systems**

7.11. We will, where appropriate, consult the Health and Safety Executive (HSE) about safety issues contained in information submitted by applicants for electricity distribution licences. We will also consult the HSE about any other safety matters. An applicant for an

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<sup>107</sup> Electricity Act s8A(2).

<sup>108</sup> Financial Ring Fencing Alternative Arrangements for New Independent Distribution Network Operators, Open Letter, 29 July 2004 <https://www.ofgem.gov.uk/ofgem-publications/45467/7811-alternative-arrangements-update-final.pdf>

<sup>109</sup> <https://www.ofgem.gov.uk/publications-and-updates/regulation-independent-electricity-distribution-network-operators?docid=2&refer=Networks/ElecDist/Policy/IDNOs>



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electricity distribution licence is not required to submit information about the safe operation of its proposed system. However, we will take into account any comments made by the HSE about whether it considers the system can be operated safely.

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## 8. Electricity transmission applications

### Section summary

This section provides applicants with information on the additional requirements for electricity transmission licence applications. This includes information on the extent of participation in transmission and standard licence conditions in transmission licences.

### Licence specific information and requirements

8.1. This guidance is not applicable to applications for offshore transmission licences.

8.2. For electricity transmission licence applications, there is the extra step of us publishing a notice of intention to grant a licence setting out our reasons. The notice period for this is 28 days.<sup>110</sup>

8.3. Where we receive representations about a proposal to grant a transmission licence we will consider whether they are relevant to our decision and if necessary the application may be re-assessed.

8.4. Information on the delivery of large onshore electricity transmission projects is available on our website.<sup>111</sup>

### Extent of participation in transmission

8.5. There is a single, licensed transmission system operator for GB.<sup>112</sup> Separately, other transmission licensees undertake 'transmission ownership' activities.<sup>113</sup>

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<sup>110</sup> Electricity Act s6B(3).

<sup>111</sup> <https://www.ofgem.gov.uk/electricity/transmission-networks/competition-onshore-transmission>

<sup>112</sup> [https://www.ofgem.gov.uk/system/files/docs/2019/04/ngeso\\_consents\\_and\\_direction\\_letter\\_-\\_01.04.19.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/04/ngeso_consents_and_direction_letter_-_01.04.19.pdf)

<sup>113</sup> Under s4 of the Electricity Act, reference to a person who participates in the transmission of

8.6. For applicants seeking to undertake transmission ownership activities, we will, in assessing an application, consider whether the activities the applicant wishes to undertake are currently undertaken by another transmission licensee in that particular area.

8.7. Where we intend to grant a licence to an applicant allowing transmission ownership activities to be undertaken in an area currently covered by another transmission licensee's licence, we may seek to modify the incumbent transmission licensee's licence to remove that area from the incumbent's licence.

### **Competition in onshore transmission**

8.8. Under the Competitively Appointed Transmission Owner (CATO) proposals for competition in electricity transmission,<sup>114</sup> Ofgem would grant new electricity transmission licences for the delivery of specified new, large electricity transmission projects following a competition. As part of the competition, Ofgem would assess bidders' proposals in detail in order to determine whether they could undertake the necessary functions to be awarded an electricity transmission licence. Ofgem is currently working with government to develop and enact the legislation necessary to underpin the CATO regime. When that legislation is in place, Ofgem will publish the detailed requirements and processes for granting a new electricity transmission licence following a competition.

### **Standard licence conditions in transmission licences**

8.9. An applicant for a transmission licence will have conditions in effect in its licence according to the activities it plans to undertake. An applicant who wishes to act as a transmission owner will have the following sections in effect in its licence:

- Section A. Interpretation, application and payments

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electricity is to a person who (a) co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, or (b) makes available for use for the purposes of such a transmission system anything which forms part of it.

<sup>114</sup> <https://www.ofgem.gov.uk/electricity/transmission-networks/competition-onshore-transmission>

- Section B. General
- Section D. Transmission owner standard conditions.

8.10. The system operator will have the following sections in effect in its licence:

- Section A. Interpretation, applications and payments
- Section B. General
- Section C. System operator standard conditions.

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## 9. Transfers, extensions, restrictions, modifications of area

### Section summary

This section provides existing licence holders with information on transfers, extensions, restrictions and modifications of area.

### Licence transfers

9.1. The Acts allow a licence to be transferred to another legal entity only with the consent of the Authority.<sup>115</sup> If the registered number of the licensee remains the same, but the persons/entities which own it change, then no transfer of the licence is necessary (because the licensee itself has not changed). The transfer process only applies if a licensee wishes to transfer the licence to a different legal entity.

9.2. Applications for consent to a licence transfer are not captured by the Applications Regulations. However we apply the same considerations as if a new licence is being applied for.<sup>116</sup>

9.3. Applicants for a transfer should submit a covering letter and a fully completed application form<sup>117</sup> on behalf of the proposed new licence holder. The covering letter should set out clearly the existing licensee's details (as the transferor), the reason(s) for the transfer request, and the date you propose it to take place (subject to our consent).

9.4. As part of the application, in respect of the transferee's proposed arrangements to commence the licensable activity, we expect you to explicitly set out the transferee's

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<sup>115</sup> s.8(AA) of the Gas Act 1986 and s.7(A) of the Electricity Act 1989.

<sup>116</sup> Gas Act s8AA(6) and Electricity Act s7A(6).

<sup>117</sup> Including the relevant licence-specific information.

arrangements to accede to the relevant industry codes, and arrangements in respect of the transferor's existing customers if applicable.<sup>118</sup>

9.5. Before consenting to transfer a licence, we are required by the Acts to consult (give notice) for a period of not less than two months.<sup>119</sup> Where we receive representations about a proposal to transfer a licence we will consider whether they are relevant to our decision and if necessary the application may be re-assessed.

9.6. Following the close of the notice period, subject to any representations and final checks we may undertake, we may issue consent to the transfer which will include the date the transfer is expected to take place.

9.7. There is no processing time period for transfers, however we endeavour to complete the process within a similar timeframe to that if it were a new licence application, plus allowance for the additional period required for consultation as set out above.

### **Supply licence transfers**

9.8. We expect suppliers to take all reasonable steps to ensure continuity of supply for each applicable customer on terms that are the same as, or as similar as possible to, the terms in place between the original licence holder and that customer immediately before the transfer is to have effect. Applicants for a transfer should provide us with information on how this will be achieved.

9.9. Suppliers wishing to transfer their licence should be aware of the need to comply with the relevant licence conditions and provisions of consumer protection law which concern the transparency of information and changes to contracts. For example, in respect of domestic customers, this would include (but not be limited to) the need to consider compliance with the Consumer Rights Act 2015, the Standards of Conduct in SLC 0 and the provisions of SLC 23 of the supply licence which (amongst other things) cover advance notification about the

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<sup>118</sup> The relevant licence conditions will apply to the transferee immediately on the date of transfer and therefore all appropriate arrangements must be in place.

<sup>119</sup> Gas Act s8AA(9) and Electricity Act s7A(9).

ending of contracts, price increases and other changes to contractual terms that are to the disadvantage of a domestic customer.

9.10. Following the conclusions of our Supplier Licensing Review in 2019, supply licence applicants must provide information including their market entry plans, initial funding, and plans to comply with key customer service obligations. These requirements also apply in the case of transfers. However, we will treat this information requirement proportionately, for example if the transfer is for a corporate restructuring within the group of an established supply company.

## **Extensions, restrictions and modifications of area**

9.11. Certain existing licences can be modified in terms of the specified area or premises covered by the licence.

9.12. This includes for gas and electricity supply licences whether domestic premises can be supplied. An extension of a non-domestic supply licence to cover domestic premises is given effect through a Domestic Supply Direction.<sup>120</sup> Similarly, the Authority can on request direct that an existing domestic supply licence is restricted to non-domestic premises only.<sup>121</sup>

9.13. For supply restrictions,<sup>122</sup> because it is important that any restriction does not leave consumers without a supply, we will check that proposals for ensuring continuity of supply are sufficient to:

- notify existing and affected consumers of the effects of any restriction;

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<sup>120</sup> A direction issued by the Authority under paragraph 3 of standard condition 3 (Application of Section B of -standard conditions).

<sup>121</sup> All supply licences contain the non-domestic supply conditions.

<sup>122</sup> While supply licence restriction applications are not assessed against the supply licence-specific criteria for new supply licences, transfers or extensions, we may request certain additional information if we consider it relevant to our decision.

- secure alternative supply for affected consumers on the same terms as nearly as is possible to the existing contract; and
- ensure that any prospective supplier is licensed.

9.14. We will not grant an extension or restriction where, in our opinion, the description or area of the premises to be supplied would artificially include in the restriction or exclude from the extension, premises likely to be owned or occupied by persons who are chronically sick, have a disability, are of pensionable age, or are likely to default in the payment of charges.<sup>123</sup>

9.15. In respect of network licences, because it is important that any restriction does not leave consumers without a connection we will check that the applicant's proposals for ensuring consumers remain connected are sufficient. We will therefore, when assessing an applicant's proposals to ensure consumers have a connection, check that the proposed arrangements are sufficient to:

- notify affected consumers of the effects of any restriction;
- notify existing suppliers of the effects of any restriction;
- ensure that arrangements have or will be made to secure alternative connection for affected consumers; and
- ensure that any prospective transporter or distributor is licensed.

### **Modification of a transmission licence area**

9.16. We will apply the same criteria when assessing an application for modification of an electricity transmission licence as those used in the assessment of an application for a licence. In addition, because it is important that any modification of an area does not affect the operation of the National Electricity Transmission System we will take into consideration

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<sup>123</sup> Gas Act s7A(8). Although there is no corresponding provision in the Electricity Act, in order to protect customers and in line with our policy to align the gas and electricity markets wherever possible, we have extended this provision to apply to electricity supply licences.



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whether the proposed modification would affect persons connecting to the National Electricity Transmission System.

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## 10. Licence grants and refusals

### Section summary

This section provides applicants with information on the granting of a licence, and the process and potential reasons for refusing a licence.

### Licence grants

10.1. If the results of our checks and assessment against all relevant criteria are satisfactory, the application notice period has expired, and there are no outstanding issues or questions arising from our assessment of the application, we will proceed to grant the licence applied for.

10.2. We will issue ~~a signed, sealed licence to your registered address (or principal place of business if you are not incorporated). We will also confirm~~ the licence grant by email, provide you with a pdf copy of the licence, and publish a notice of licence grant on our website: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/notices/application-notices> ~~If you would like to receive a licence to your registered address, you can let us know in the application form or via email at any point during the application process.~~

### After a licence is granted

10.3. You are expected to comply with the conditions of your licence from the date it is granted. The SLCs applicable to any licence we may grant you may be modified.

10.4. You are responsible for ensuring that you keep up to date on any changes to the SLCs and that you are in compliance. Notices of modifications can be found on our website at: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/notices/modification-notices>. Consolidated licence conditions can be found at: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>

10.5. If you wish to learn more about how licence changes may happen, please contact us at [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk).

10.6. We have the power under sections 28-30F of the Gas Act and sections 25-27F of the Electricity Act to take enforcement action for breach of your licence. More information on enforcement can be found on our website at <https://www.ofgem.gov.uk/investigations/ofgems-powers>

## Licence refusals

10.7. We may propose to refuse an application where, amongst other things:<sup>124</sup>

- the grant of a licence may conflict with our principal or general statutory duties;
- any person(s) named in the application (or person with significant managerial responsibility or influence) are disqualified to any extent from acting in connection with the affairs of a company;
- any person(s) or entity named in the application (or person with significant managerial responsibility or influence) are undischarged bankrupts, have been declared insolvent, or has unsatisfied county court judgment(s);
- any person(s) named in the application (or person with significant managerial responsibility or influence) has an unspent criminal conviction;
- any person(s) named in the application (or person with significant managerial responsibility or influence) was directly involved in recent Ofgem compliance or enforcement action and/or triggered a Supplier of Last Resort event where there was material consumer or market detriment;

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<sup>124</sup> For the avoidance of doubt this is not intended to be an exhaustive list.

- the applicant or any related person has previously had a licence application refused or a licence revoked;
- the applicant has failed to provide sufficient information to satisfy us that they meet the relevant licence-specific criteria; and/or
- we consider information supplied to be false or misleading.

10.8. This is not an exhaustive list and is intended as guidance only. We will take an overall view of the application and information used to verify its contents against the published criteria for assessment of applications, in the context of our principal objective and duties. We are not constrained by particular examples in this guidance. All applications will be assessed and our judgement will be based on the facts and merits of the case.

10.9. Where we propose to refuse a licence application, the reasons will be given to the applicant in a notice which explains what further information, if any, is needed. The notice will:

- state that we propose to refuse the application;
- state the reasons why we propose to refuse the application; and
- specify the time within which representations may be made.<sup>125</sup>

10.10. We will usually allow the applicant 10 working days from the date of the notice to make representations about why it disagrees with our proposal to refuse the application and to provide further information to support the representations (if required). Note that making representations is an opportunity to set out any errors in our assessment, to clarify any misunderstandings and to set out why the applicants disagrees with our decision, all based on information presented by the application during the application process. It should not be considered an opportunity to change material matters in the application or provide substantial new supporting material. A new application should be submitted if the applicant wishes for us to assess a different business proposition. We will consider any representations which are

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<sup>125</sup> In accordance with s6A(4) of the Electricity Act 1989 and s7B(2A) of the Gas Act 1986.

made. Applicants are still able to withdraw their application during this time if they decide to do so.

10.11. Should no representations have been made within 10 working days<sup>126</sup> of the notice, or if after considering any representations made, we are still of the view that the application should be refused, the applicant will be notified in writing of the decision to refuse the licence. The notification will:

- where no representations have been made, restate the reasons for the refusal of the application; or
- where representations were made, state the reasons for the refusal of the application, referring to the representations made where appropriate.

10.12. If you do not agree with our decision, you can raise this with us through our complaints process. Information on how to make a complaint is available on our website: <https://www.ofgem.gov.uk/about-us/transparency/complaints-about-ofgem>.

10.13. Applicants who are refused a licence are not prevented from reapplying at a later date.

### **Prohibited names<sup>127</sup>**

10.14. We consider it important that consumers and other market participants are protected from any confusion which may arise from the naming of "phoenix" companies<sup>128</sup> in the minority of cases where there is abuse of the phoenix company arrangements.

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<sup>126</sup> Or any alternative timeframe set.

<sup>127</sup> For the purposes of this section, a name is a prohibited name in relation to such a person if (a) it is a name by which the liquidating company was known at any time in that period of 12 months, or (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company. S216(2), The Insolvency Act 1986.

<sup>128</sup> A phoenix company is where the assets of one Limited Company are moved to another legal entity. Often some or all of the directors remain the same and in some cases, the new company has the same or a similar name. The Insolvency Act makes it an offence for a director of a company which has gone

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10.15. Where we suspect that an applicant may be using a prohibited name in breach of the Insolvency Act 1986 (as amended) we will liaise with the relevant Insolvency Practitioner and, where appropriate, the Insolvency Service. We will not grant a licence where there is a court decision<sup>129</sup> that an applicant is using a prohibited name in breach of the Insolvency Act 1986 (as amended). In addition, we will usually wait for the final outcome of any court proceedings to determine that question and/or where a claimant has sought the leave of the court to use a prohibited name, before granting a licence to the applicant company.

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into insolvent liquidation to be a director of a company with the same or similar name, or be concerned in its management, without leave of the court within five years after winding up or the exceptions set out in section 216 of the Insolvency Act.

<sup>129</sup> Under the Insolvency Act there are certain exceptions on prohibited names and a court can grant leave making the use of a prohibited name lawful.

## Appendices

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## Appendix 1

### Risk assessment template

TIER 1	Risk score		
	Low (0)	Med (1)	High (2)
<b>1. Applicant/Parent/Ultimate Holding Company details</b>			
<p>Are company details verifiable, consistent with public records, with no adverse information found?</p> <p>Is the applicant VAT registered (where applicable)?</p> <ul style="list-style-type: none"> <li><b>Low</b> = All details match company registry (including directors/shareholders/controllers); company is active with up to date filing and no insolvency history; relevant contact details provided; VAT registration confirmed</li> <li><b>Med</b> = Company is dormant or filing/accounts are overdue; frequent or recent changes in company history; minimal contact details/contact details not publically available; no VAT registration (where applicable)</li> <li><b>High</b> = Unable to verify details; omissions or inconsistencies between information provided and public sources; evidence of insolvency history; VAT registration not verified</li> </ul>			
<b>2. Proposed arrangements to commence licensable activity</b>			
Has the applicant demonstrated a plan to commence			



<p>the licensable activity, with a clear timeline and relevant arrangements described? <u>Is the applicant's plan likely to be significantly impacted by current market conditions or industry change programmes?</u></p> <ul style="list-style-type: none"> <li>• <b>Low</b> = Clear outline of relevant activities/arrangements, with key milestones and reasonable/imminent timeframe; <u>market/industry conditions present low risk to stated plans</u></li> <li>• <b>Med</b> = Some detail provided but with notable omissions and/or unclear <u>or unrealistic</u> timings; <u>market conditions or industry change programmes present moderate risk to stated plans</u></li> <li>• <b>High</b> = Insufficient detail to understand how or when the applicant intends to commence the licensable activity; <u>substantial gaps in management personnel to support commencement of licensable activity; market conditions or industry change programmes present significant risk to applicant's stated plans</u></li> </ul>			
<b>3. Licence/application history</b>			
<p>Does the applicant or any related person have any previous licence revocations or refusals, or other potentially adverse licensing history?</p> <ul style="list-style-type: none"> <li>• <b>Low</b> = No</li> <li>• <b>Med</b> = Reasons for any past revocations/refusals not directly relevant or significant time elapsed; multiple licensees with unclear relationship</li> <li>• <b>High</b> = Previous/recent revocations/refusals relevant to decision; other adverse licensing history</li> </ul>			
<b>4. Suitability to hold a licence</b>			

<p>Has any adverse information been disclosed or discovered in respect of the applicant <u>or anyone named in the application or that is otherwise relevant to the application</u>, <del>any person named in the application, or person with significant managerial responsibility or influence</del>, including:</p> <ul style="list-style-type: none"> <li>- criminal convictions,</li> <li>- director disqualifications,</li> <li>- insolvency/bankruptcy/CCJs,</li> <li>- Supplier of Last Resort events,</li> <li>- related compliance/enforcement history,</li> <li>- refusal/revocation/restriction/termination/disciplinary by any other body,</li> <li>- competition law infringements, or</li> <li>- any other adverse information brought to attention during application process?</li> </ul> <p>Has the applicant engaged openly and constructively during the application process?</p> <ul style="list-style-type: none"> <li>• <b>Low</b> = No adverse information</li> <li>• <b>Med</b> = Some adverse information but not directly relevant/significant to application, <u>some inconsistency between information disclosed by the applicant and Ofgem's own assessment of information sources</u></li> <li>• <b>High</b> = Adverse information relevant to application; applicant has not engaged openly and/or evidence of false or misleading information</li> </ul>			
<p><b>5. Licence specific criteria/information (if applicable)</b></p>			
<p><b>a) If the application is for a network or interconnector licence, or any restriction:</b></p>			

<p>Has the applicant satisfied the licence-specific requirements?</p> <ul style="list-style-type: none"> <li>• <b>Low</b> = Information is adequate; no significant risks identified</li> <li>• <b>Med</b> = Information is borderline or clarifications needed; some areas of elevated risk</li> <li>• <b>High</b> = Inconsistencies/omissions; information insufficient; and/or significant risks identified</li> </ul>			
<p><b>b) If the application is for a supply licence:</b></p> <p>Has the applicant demonstrated they have appropriate resources for their plan to enter the supply market <u>given current market conditions</u>, including but not limited to:</p> <ul style="list-style-type: none"> <li>- how they will manage and resource core functions, and that they understand the relevant energy market costs?</li> <li>- reasonable assumptions about the impacts of growth on their financial and operational resources?</li> <li>- awareness of key risks and a plan to manage/mitigate these, with financial stress-testing within reasonable parameters?</li> <li>- proof of available financial resources, for at least the first year, that is consistent with their entry plans, stress-testing and/or other arrangements?</li> </ul> <p>Has the applicant provided a Certificate of Adequacy?</p> <ul style="list-style-type: none"> <li>• <b>Low</b> = Information is adequate; no significant risks identified; Certificate of Adequacy provided</li> <li>• <b>Med</b> = Information is borderline or clarifications needed; some areas of elevated risk</li> <li>• <b>High</b> = Inconsistencies/omissions; information insufficient</li> </ul>			

<i>or implausible; evidence of template responses provided; Certificate of Adequacy not provided; and/or significant risks identified</i>			
<p><b>c) If the application is for a supply licence:</b></p> <p>Has the applicant demonstrated they understand their regulatory obligations and have a plan to comply with these – including industry codes, government schemes and customer service obligations?</p> <p>Does the applicant's 'statement of intent' adequately cover all areas set out in the guidance to the extent relevant?</p> <ul style="list-style-type: none"> <li><b>Low</b> = Information is adequate; no significant risks identified</li> <li><b>Med</b> = Information is borderline or clarifications needed; some areas of elevated risk</li> <li><b>High</b> = Inconsistencies/omissions; information insufficient <i>or implausible; evidence of template responses provided; and/or significant risks identified</i></li> </ul>			
<b>Total</b>			

<b>TIER 2</b>	<b>Risk score</b>		
<i>Risk score allocation applicable where information is requested</i>			
	<b>Low (0)</b>	<b>Med (1)</b>	<b>High (2)</b>
<b>Copies of official documents</b>			
<ul style="list-style-type: none"> <li><b>Low</b> = Documents provided/verified</li> <li><b>Med</b> = Documentation incomplete but no significant risk identified</li> <li><b>High</b> = Documentation not provided or shows</li> </ul>			

<i>inconsistencies/omissions</i>			
<b>Progress with relevant industry codes</b>			
<ul style="list-style-type: none"> <li><b>Low</b> = Evidence of substantive contact/progress with code accessions/testing requirements</li> <li><b>Med</b> = Minimal evidence of contact/progress</li> <li><b>High</b> = No progress made toward code accessions</li> </ul>			
<b>Applicant's bank/solicitors/auditors</b>			
<ul style="list-style-type: none"> <li><b>Low</b> = Verifiable details provided</li> <li><b>Med</b> = Unable to verify details but no significant risk identified</li> <li><b>High</b> = Not provided or inconsistencies/omissions</li> </ul>			
<b>Ofgem interview and/or provision of additional documentation/information</b>			
<ul style="list-style-type: none"> <li><b>Low</b> = Applicant is open and proactive in respect of all issues; additional documentation reviewed <u>is and explanations provided at interview are satisfactory</u></li> <li><b>Med</b> = Lower level risks/issues identified/remains unresolved; <u>interview responses incomplete or lacking in detail</u></li> <li><b>High</b> = Applicant fails to co-operate; significant issues/risks/concerns remain unresolved; <u>interview responses conflict with information provided in application form</u></li> </ul>			
<b>Total</b>			

**NOTES:**

1. The risk assessment template is used for all licence applications and indicates the type of considerations we will apply to the information provided. We will consider the nature, likelihood and impact of any areas of elevated risk identified.
2. An application may be escalated to Tier 2 where the Tier 1 risk assessment score is 2 or above.
3. For Tier 2, the specific information / documentation requested and whether the applicant is

requested to attend an interview will be decided on a case-by-case basis, depending on specific areas and degree of risk identified.

4. If the application is escalated to Tier 2 a further risk score will be applied against the Tier 2 criteria.
5. We will re-evaluate the Tier 1 risk score as applicable based on any additional information provided.
6. Any costs associated with applying for a licence are at the applicant's expense and will not be reimbursed by Ofgem.
7. For the avoidance of doubt, applications may be refused at Tier 1.

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## Appendix 2

### Version history

Version	Comments	Publication date	Effective date
1.0	New guidance document published for 2019 Applications Regulations, following Supplier Licensing Review (Entry) final proposals	18 June 2019	5 July 2019
1.1	Updates to the following sections: <ul style="list-style-type: none"> <li>Chapter 2:               <ul style="list-style-type: none"> <li>Section 2.20-2.37 – updated time period and tacit authorisation arrangements for supply licence applications, and added supporting rationale</li> </ul> </li> <li>Chapter 4: added note at start</li> <li>Footnotes: footnote 16 and 90 broken links amended</li> <li>Throughout: section numbers and footnotes updated where appropriate</li> </ul>	15 December 2021	15 December 2021
<u>1.2</u>	<u><b>Draft for consultation</b></u> <u>Updates to:</u> <ul style="list-style-type: none"> <li><u>Chapter 3 updated definition of SMRI; clarified assessment of readiness to commence licensable activity; added information on content of interviews and CVs;</u></li> <li><u>Chapter 4 added factors considered when assessing supply licence applications; clarified what information must</u></li> </ul>	<u>4 February 2022</u>	<u>Confirmed upon publication of decision</u>

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	<p><u>be provided to enable assessment; updated definition of SMRI;</u></p> <ul style="list-style-type: none"><li>• <u>Chapter 10 clarified scope of representations; updated process for issuing licences; clarified licence refusals grounds</u></li><li>• <u>Appendix 1 risk assessment criteria</u></li></ul> <p><u>Throughout: footnotes updates or removed where appropriate</u></p>		
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