

## Significant commercial developments and senior personnel changes guidance

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This guidance document is intended to help suppliers understand their obligations in relation to the assessment process for significant commercial developments (Trade Sales/Purchases and Relevant Merger Situations) and senior personnel changes. It explains who is required to notify Ofgem to begin the assessment process and when and how to notify Ofgem. It also gives an overview of information requirements and the criteria we will use for assessments.

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## 1. Introduction

### Context and related publications

- 1.1. In our 29 October 2021 open letter<sup>1</sup>, we announced that we would take further steps to ‘raise the bar’ in terms of what we expect from suppliers with regards to financial risk management to reduce the risks facing consumers going forward, and to ensure the energy sector is resilient against potential continued global market volatility. Therefore, following statutory consultation<sup>2</sup>, we decided to modify SLC 19AA to specify more clearly when notifications for significant commercial developments and senior personnel changes must be made<sup>3</sup> in order to provide clarity for suppliers and avoid ambiguity when it comes to compliance with these important provisions.
- 1.2. Enhanced notification requirements for significant planned commercial developments and senior personnel changes were introduced following our Decision on strengthening milestone assessments and additional reporting requirements. These requirements supersede basic notification requirements introduced as part of the *Supplier Licensing Review: Ongoing requirements and exit arrangements* decision, published on 26 November 2020<sup>4</sup>. The enhanced requirements take effect on and from 1 April 2022.
- 1.3. Any capitalised terms within this guidance refer to the terms as defined in the Gas and Electricity supply licences, unless otherwise stated.

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<sup>1</sup> Ofgem (2021) [Rising wholesale energy prices and implications for the regulatory framework | Ofgem](#)

<sup>2</sup> Ofgem (2021) [Statutory consultation on strengthening milestone assessments and additional reporting requirements | Ofgem](#)

<sup>3</sup> In this document “commercial developments” refers to trade sales/purchases and Relevant Merger Situations as defined in Standard Licence Condition 19AA while “senior personnel” refers to Persons with Significant Control and Persons with Significant Managerial Responsibility or Influence, also as defined at standard licence condition 19AA.

<sup>4</sup> Ofgem (2020) [Decision on the Supplier Licensing Review: Ongoing requirements and exit arrangements | Ofgem](#)

## 2. Notification requirements

### Trade Sales/Purchases and Relevant Merger Situations

- 2.1. A supplier is required to notify the Gas and Electricity Markets Authority (the Authority<sup>5</sup>) of a prospective Trade Sale/Purchase or Relevant Merger Situation at least 40 working days in advance of the date on which the licensee is due to enter into the Trade Sale/Purchase or Relevant Merger Situation. The notification must be accompanied by a fully completed Assessment Template and be made via email to [supplier@ofgem.gov.uk](mailto:supplier@ofgem.gov.uk).
- 2.2. The requirement to notify the Authority applies to licensees who hold a gas or electricity supply licence regardless of whether that licensee supplies Domestic Customers, Non-Domestic Customers or both.
- 2.3. SLC 19AA.2 requires licensees not to proceed with Trade Sales / Purchases or Relevant Merger Situations until it has provided the Authority with information to carry out an SLC 19AA assessment and the Authority has notified the licensee that it has completed that assessment, unless the Authority directs otherwise. SLC 19AA.4 also provides that the licensee is not required to comply with SLC 19AA.2 to such extent and subject to such conditions as the Authority may from time-to-time direct.
- 2.4. The Authority may issue a direction under SLC 19AA in a variety of circumstances such as, but not limited to, transactions where a supplier with a high number of customers purchases a book containing a much lower number of customers. We anticipate that such a transaction is unlikely to require as high a degree of scrutiny as other types of transactions. For the avoidance of doubt, the Authority will consider the full circumstances of the Trade Sale/Purchase or Relevant Merger Situation and will decide whether to issue such a direction on a case-by-case basis.
- 2.5. The Trade Sale/Purchase and Relevant Merger Situation assessment process will require suppliers to be proactive, engage with the Authority constructively and plan in advance. We therefore strongly encourage all suppliers to engage early with the

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<sup>5</sup> The terms “we”, “us”, “our”, “Ofgem” and “the Authority” are used interchangeably in this document and refer to the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

Authority and to provide full and accurate information to the Authority as soon as possible. Where a supplier notifies the Authority earlier than required and provides full and accurate information, it may be possible to reduce the expected 40 working day assessment period. In certain circumstances, this early and proactive engagement could result in circumstances where the Authority would consider it appropriate to issue a direction under SLC 19AA.2 or SLC 19AA.4 as described above (this will however be at the Authority's full discretion and will be decided on a case-by-case basis).

## Senior personnel changes

- 2.6. A supplier is required to notify the Authority where there is a reasonable prospect that there will be a change in a Person with Significant Control or Significant Managerial Responsibility or Influence (as defined in SLC 19AA). In this guidance we refer to these changes as a senior personnel change.
- 2.7. Where a supplier has notified the Authority of a senior personnel change, it must submit a fully completed Employee Checklist<sup>6</sup> at the same time that it submits the notification.
- 2.8. The requirement to notify the Authority applies to licensees who hold a gas or electricity supply licence regardless of whether that licensee supplies Domestic Customers, Non-Domestic Customers or both.
- 2.9. The Employee Checklist will set out a number of factors that we consider indicate that a senior personnel change could pose a risk to the supplier's financial resilience and / or its operational capabilities. By completing the Employee Checklist the supplier will confirm its self-assessment against each factor.
- 2.10. Where no risk factors apply, we will issue a direction under SLC 19AA.2 or SLC 19AA.4 waiving the requirement for an assessment.
- 2.11. If one or more risk factors applies, the supplier must inform us of this when making their notification. Where a risk factor does apply, we expect that we will proceed to

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<sup>6</sup> This is a checklist for the supplier's self-assessment which we require in advance of a Senior Personnel Change. This checklist will be appended to this guidance in due course.

carry out an assessment conducted within a 20-working day period. Where we do not issue a direction waiving the requirement for an assessment under SLC 19AA, the supplier must take all reasonable steps not to allow the senior personnel change until the Authority has notified the supplier that it has completed the assessment. Suppliers should therefore expect a senior personnel change not to proceed for up to 20 working days if the Employee Checklist submitted alongside the notification of a senior personnel change identifies that the person in question possesses one or more risk factors.

2.12. We strongly encourage suppliers to notify the Authority and submit the Employee Checklist as far in advance of any senior personnel changes as possible. Doing this and engaging proactively may enable us to issue a direction confirming that an assessment is not required (this will be at the Authority's discretion and on a case-by-case basis). Engaging in this way therefore is likely to reduce the likelihood of a senior personnel change being paused while an assessment is completed.

2.13. The supplier must notify the Authority and submit the fully completed Employee Checklist by sending these by email to [supplier@ofgem.gov.uk](mailto:supplier@ofgem.gov.uk).

### 3. Assessment criteria

## Trade Sales/Purchases and Relevant Merger Situations

### Definition

- 3.1 Trade Sale and Trade Purchase are defined at SLC 1 of the gas and electricity supply licences.
- 3.2 Relevant Merger Situation is as defined under SLC 19AA of the gas and electricity supply licences.

### Objective of assessment

- 3.3 Our statutory duty is to protect the interests of existing and future consumers. When we assess a Trade Sale/Purchase or a Relevant Merger Situation, our key objective is to assess whether the relevant suppliers have suitable financial and operational capabilities in place to ensure consumers' interests are protected.

### Content of assessment

- 3.4. The content and criteria of the assessment will be based on the criteria included in our open letter on Trade Sales/Purchases<sup>7</sup>, our Dynamic/Milestone Assessments guidance<sup>8</sup>, and the obligations set out in our Financial Responsibility Principle<sup>9</sup>. These will be set out in an Assessment Template that we will append to this document in due course.

### Engagement with the Authority

- 3.5. We expect suppliers to be open and honest in their engagement with us and be proactive in providing relevant information. Any failure to co-operate constructively with Ofgem during the notification and assessment process may delay the assessment

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<sup>7</sup> Ofgem (2020) [Open letter to energy suppliers considering and/or involved in a trade sale | Ofgem](#)

<sup>8</sup> Ofgem (2020) [Milestone assessment guidance | Ofgem](#)

<sup>9</sup> Ofgem (2021) [Guidance on the Financial Responsibility Principle | Ofgem](#)



process. Where there is evidence that incorrect information has been provided, this may result in the supplier being in breach of its supply licence conditions.

### **Outcomes following an assessment**

- 3.6. Where we consider a Trade Sale/Purchase or Relevant Merger Situation assessment necessary, and where following that assessment we have concerns that the conclusion of the Trade Sale/Purchase or Relevant Merger Situation in its proposed form would be likely to result in harm to consumers, including by undermining the Supplier of Last Resort process, we will notify the supplier of our assessment findings. In line with its supply licence obligations, the supplier must have regard to these findings.
- 3.7. Suppliers must be able to demonstrate that they are meeting the assessment criteria. Where it appears to the Authority that the supplier is contravening or is likely to contravene its obligations, this could lead to compliance and enforcement action.
- 3.8. Neither a completed assessment, nor our findings notified to the supplier, should be viewed as providing an endorsement of the Trade Sale/Purchase or Relevant Merger Situation nor will it preclude any future compliance or enforcement action being taken, regardless of the findings of the assessment.

## **Senior personnel changes**

### **Definition**

- 3.9. We define senior personnel as a Person with Significant Control<sup>10</sup>, or as a Person with Significant Managerial Responsibility or Influence.<sup>11</sup>

### **Our approach to assessment**

- 3.10. As per the guidance set out in Section 2, suppliers are required to provide us with a fully completed Employee Checklist confirming the supplier's assessment of each of the risk factors for each person when undertaking a significant personnel change.

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<sup>10</sup> as defined under section 790C of the Companies Act 2006.

<sup>11</sup> as defined under Supply Licence Conditions. [Licences and licence conditions | Ofgem](#)

- 3.11. If one or more risk factors applies, the supplier must inform us of this when making their notification. Where a risk factor does apply, we expect that we will proceed to carry out an assessment conducted within a 20-working day period. In these cases, we will request further information from the supplier regarding the prospective senior personnel change to allow us to complete the assessment.
- 3.12. Where we do not issue a direction waiving the requirement for an assessment under SLC 19AA, the supplier must take all reasonable steps not to allow the senior personnel change until the Authority has notified the supplier that it has completed the assessment. Suppliers should therefore expect a senior personnel change not to proceed for up to 20 working days if the Employee Checklist submitted alongside the notification of a senior personnel change identifies that the person in question possesses one or more risk factors.

### **Content of assessment**

- 3.13. Our assessment checks and criteria for senior personnel changes are non-discriminatory and follow a risk-based approach.
- 3.14. The Employee Checklist and our assessment will reflect the criteria and requirements set out in SLC 4C (Ongoing fit and proper persons requirements). These will include but not be limited to:
- Serious misconduct or mismanagement
  - Unspent criminal convictions
  - Insolvency history
  - Director disqualification
  - Involvement in a Supplier of Last Resort
  - Involvement in previous regulatory compliance and enforcement action

### **Engagement with the Authority**

3.15. We expect suppliers to be open and honest in their engagement with us and be proactive in providing relevant information. Any failure to co-operate constructively with Ofgem during the notification and assessment process may delay the assessment process and appointment of personnel. Where there is evidence that incorrect information has been provided, this may result in the supplier being in breach of its supply licence conditions.

### **Outcomes following an assessment**

3.16. On completion of a senior personnel change assessment, we will notify the supplier of our findings. In line with its licence obligations, the supplier must have regard to these findings. Our findings may suggest that the person appears not to be a fit and proper person and that the supplier should consider their compliance with SLC 4C before making the personnel change.

3.17. Compliance and enforcement action can be taken where it appears to the Authority that the supplier is contravening or is likely to contravene its obligations having been in receipt of our findings.

3.18. A completed assessment should not be viewed as providing an endorsement of a particular person, nor will it preclude any future compliance or enforcement action being taken, regardless of the findings of the assessment.