

Existing and future applicants for
gas and electricity licences

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Decision on consultation on changes to Ofgem's licence application guidance

Dear colleagues,

On 4 February 2022 Ofgem¹ published our consultation² on changes to Ofgem's guidance on applying for a gas or electricity licence (the Guidance), which closed on 25 February 2022. Today we are publishing the updated Guidance which reflects the heightened expectations that applicants must meet when entering the market – ensuring that new suppliers have sustainable and resilient business models and the capacity to manage significant financial risks without passing inappropriate risks to consumers.

These changes to the Guidance are of particular relevance to applicants for a supply or shipping licence. The changes relate to financial risk controls, scope of relevant person to be identified and the criteria we use to assess the risk of an application, and link to action 7 of our action plan on retail financial resilience published in December 2021 - the Action Plan³. This updated version of the Guidance also seeks to provide additional clarity on the types of information that is required to demonstrate suitability to hold a licence.

Having consulted on these changes and considered the views of respondents, we will be proceeding with the changes as proposed, making one minor wording change explained under "Scope of relevant persons and information to be disclosed". We are proceeding with

¹ In this letter the terms "we", "us", "our", "Ofgem" and "the "Authority" are used interchangeably and refer to the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

² [Consultation on changes to Ofgem's guidance on applying for a gas or electricity licence | Ofgem](#)

³ [Action plan on retail financial resilience | Ofgem](#)

these proposals as we consider that they reduce potential harm to energy consumers in line with our principal objective while still encouraging well-financed new entrants, new business models, innovation and proportionate risk taking.

Overview of consultation responses

We received six responses to the consultation, none of which were confidential. These responses are published on our website. Most respondents were supportive of the changes proposed, seeing the need for measures to increase market stability, with several clarifications sought or refinements suggested.

We have taken account of all responses. We have explained our decision in more detail below. Appendix 1 provides a summary of consultation responses and our views.

Financial risk controls

We consider that those with overall financial responsibility for an energy company should have the necessary experience and capability to manage financial risks in the energy market. In light of recent events in the retail sector and the impact of mutualised costs on consumers, we consider that making these changes is in line with our principal objective of to protect consumers' interests. There is overriding public interest in us making this change.

We will assess this through information provided during the application process. We will not require that applicants have previously fulfilled a specific role in an energy business, but evidence of relevant experience and/or qualifications would be highly relevant to our consideration of whether to grant a licence. We would not consider it sufficient for an applicant to rely on the expertise of a consultant or advisor that does not hold decision-making authority in the business to fulfil this requirement.

We have clarified in the Guidance what we expect when businesses submit business plans, what we expect in terms of evidence of proof of funds and what we expect from financial projections (for example requesting financial information in an Excel compatible format). These changes are principally aimed at helping applicants get it 'right first time' to avoid delays in our assessment process and enable Ofgem to scrutinise applicant's financial and operational capabilities.

We have also clarified that, where we propose to refuse a licence application, representations made by the applicant will not be considered if they seek to change

material matters in the application or provide substantial new supporting material, for example by proposing slower growth targets or providing evidence of a new source of funding. Where an applicant wishes to amend their application at this stage, this must be submitted as a new application. We consider this a reasonable approach given applicants have the opportunity to update their application information with any significant changes during the assessment process, both in response to Ofgem questions or voluntarily, whilst leaving reasonable time for Ofgem assessment.

Scope of relevant persons and information to be disclosed

Applicants for all types of licences must already provide names of 'relevant persons' in various sections of the application form, covering Directors, Directors of any holding company or parent undertaking, persons in effective control, shareholders, and any person with significant managerial responsibility or influence (SMRI). To assist applicants in providing the necessary information 'first time', we have further explained what persons the definition of SMRI in the Applications Regulations⁴ could include and have explained what type of information we expect to be disclosed. We consider that these changes are consistent with our principal objective to protect existing and future consumers, as they will better enable us to ensure that all persons with effective control of a company are fully disclosed at the application stage and suitable to hold a licence.

As set out in more detail in Appendix 1, respondents indicated that the draft Guidance was too prescriptive in its explanation of persons who would be considered having SMRI and that it could place too great a burden on suppliers and Ofgem to implement. To make clear that, we continue to put the onus on applicants to make the judgement of who is a person with SMRI in their business, we have made the wording change below, amending "will" to "may" as shown below.

Paragraph 4.84 *"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 may 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."*

⁴ The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2019, SI No 1023m and The Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2019, SI No 1024 (together "the Application Regulations")

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

Treatment of applications as Tier 2 applications

We have made minor changes to the criteria in our risk assessment that we conduct for all types of licence applications to take account of market conditions and major industry programmes at the point of application. We consider that the current market conditions present an elevated risk to the financial stability of many new entrants and therefore an increased risk to consumers of poor service levels, supplier failure and ultimately mutualised costs. Therefore, we consider that it is in line with our principal objective to this factor in our risk assessment and overall licensing process, in order to protect the interests of consumers. As a result, we expect more supply and shipper licence applications to be classed and processed as Tier 2, though each application will be assessed on its own merits.

Next steps

The updated Guidance, published alongside this letter, will take effect from today, 17th March 2022. We will keep the licence application guidance under review as we consider further financial resilience reforms in line with our Action Plan.

We will recommence assessments of supply licence applications from early April and will contact existing applicants as to let them know when they can expect their application to be considered. For the time being, the 9 month assessment period for all supply licence applicants (extended as part of our December Action Plan) will remain in place. However, we will keep the situation under review and establish a new reasonable assessment time period later this year.

Yours faithfully,



Rebecca Barnett

Deputy Director, Financial Resilience and Controls

Appendix 1: Summary of Consultation Responses

In responses to the proposed changes where financial risk controls and treatment of applications as Tier 2 applications were referenced, respondents were broadly supportive. We received mixed views in the responses received on the issue of the scope of relevant persons and information to be disclosed.

Financial risk controls

Respondents felt that, given the volatility of recent months, it would be sensible to implement measures to stabilise the energy market, protect consumers and restore confidence. There was also support for strengthening requirements around financial risk requirements where market conditions may mean increased risk to a new entrant's financial stability and scrutiny of relevant persons connections with failed suppliers. Respondents also considered that Ofgem's approach to help applicants to get it 'right first time' is correct to ensuring only robust and stable market entrants are granted a licence.

Other respondents recommended extending proposed financial risk requirements to shipper licence applicants to provide the same protection to gas consumers as is currently provided to electricity consumers. Respondents made the point that, due to the differences between suppliers and shippers in the gas market, the proposed changes to the application guidance should apply equally to shippers and suppliers to protect all energy consumers.

Ofgem response

We note that several changes to the Guidance, such as those to the scope of relevant persons to be disclosed and the risk assessment, apply to all applicants, including shippers. This also includes section 11 of the application form under which applicants detail their proposed arrangements for commencing licensable activity. Under this heading, we do consider whether an applicant has the relevant internal capability and financial arrangements to operate in their chosen market. As per our December Action Plan⁵, we are also continuing to consider the key relationships between gas shippers and suppliers, and the need for further regulation of shippers.

We finally note that, whereas the relationship between a supplier and shipper are mainly commercial in nature, the relationship between gas networks and shippers are governed by the Uniform Network Code. We encourage industry to consider its levers in this regard, which could be used to enhance shipper exit arrangements, credit requirements and controls on shippers acting on behalf of multiple suppliers.

⁵ [Action plan on retail financial resilience | Ofgem](#)

Scope of relevant persons and information to be disclosed

A respondent highlighted the need for clarity regarding Ofgem's expectations as to what it considers to be a person with 'Significant Managerial Responsibility or Influence' (SMRI) in relation to new licence applications and sought to limit the application of this definition to new entrants only.

Clarification was also sought regarding guidance to existing licensees as to how to interpret the term SMRI along with concern that ambiguity is leading to different interpretations by suppliers which has resulted in disproportionate levels of burden. One respondent said that there should be a consultation if it is Ofgem's intention for this new definition to apply equally across SLC 4C and SLC 19AA. It was suggested that the scope of the definition was excessive and should apply to only board directors and members, company directors and any person holding equivalent power to these roles.

Other responses supported amendments to seek information to be disclosed about persons holding positions of SMRI over key business areas and apply further scrutiny to new entrants at this time, particularly with a financial risk lens, but highlighted that this should not unduly hinder applications unless there is reasonable cause for concern.

Ofgem response

We note that the definition of SMRI in the Guidance, SLC4C and SLC19AA is the same:

*"Significant Managerial Responsibility or Influence means where a person plays a role in—
(a) the making of decisions about how the whole or a substantial part of a licensee's activities are to be managed or organised, or
(b) the actual managing or organising of the whole or a substantial part of those activities."*⁶

The additional wording in the guidance is to help **licence applicants** interpret the application form which requests persons with SMRI to be declared. We consider it to be consistent with our principal objective to protect existing and future consumers to ensure that a broad range of persons with SMRI of a company are fully disclosed at the application stage and suitable to hold a licence. However, to make clear that we continue to put the onus on applicants to make the judgement of who is a person with SMRI in their business. In view of that (and as explained further in our decision letter) we have made the wording change below to the Guidance:

⁶ Regulation 3 of the Applications Regulations and Standard Licence Condition 1.3 of the gas and electricity supply licences.

Paragraph 4.84 “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 **may 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 do not therefore consider that the Guidance text amounts to a change in definition of persons with SMRI.

We note that SLC19AA separately defines a similar but different concept of “Person with significant control in respect of a licensee” which is not relevant to this Guidance for licence applicants.

Treatment of applications as Tier 2 applications

Respondents indicated that we should review supply licence applications even more robustly than we do now and consider either assessing all supply applications as Tier 2 or, at the very least, ensure face-to-face interviews are conducted in all cases.

Ofgem response

We agree that applications need to be robustly assessed, and that current market conditions present an elevated risk to the financial stability of many new entrants. Therefore, we proposed to amend our risk assessment criteria to enable us to take current market conditions and major industry programmes into account. Nonetheless, we seek to be proportionate in our assessment approach and will consider each application on its own merits and risk factors.

Other remarks

Responses also emphasised that there is an opportunity to remind current and future energy suppliers of the important role they will play in developing consumer confidence as the UK strives to meet net zero targets and that consumer protection should continue to be at the forefront of the obligations for current and future energy suppliers.

Ofgem response

We agree that it is important for energy suppliers to understand their role in maintaining consumer confidence and supporting the UK’s efforts to meet net zero targets. Energy suppliers that demonstrate their commitment to these goals will help protect both consumers and the environment.