

Consultation

Introducing a general ongoing fit and proper requirement

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Contact:	Ashley Hassell
Team:	Licensing, Industry Rules
Email:	licensing@ofgem.gov.uk

We are consulting on a proposal to modify a number of licences to introduce a general requirement for all licensees to ensure senior personnel remain fit and proper on an ongoing basis. In addition, we propose updating the current ongoing fit and proper requirements for supply licensees and the carbon dioxide transport and storage licences, as well as the suitability assessment requirements for licence applicants.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses.

We would like views from people with an interest in the requirements for licence holders and licence applicants. We particularly welcome responses from existing licensees, potential licence applicants, consumer groups and charities. We would also welcome responses from other stakeholders and the public.

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Contents

Executive summary	4
 1. Context and rationale for change	5
Limitations of the current single ‘point-in-time’ assessment	5
Promoting consistent high standards across the sector	6
Next steps	8
How to respond	8
Your response, data, and confidentiality	8
How to track the progress of a consultation	9
 2. Fit and proper requirements for non-supply licensees	10
Proposed ongoing fit and proper requirement	10
Implementation of requirements	12
Future licensing requirements	13
 3. Improving existing ongoing fit and proper requirements	15
Policy development to date	15
Current requirements	16
Proposed changes and their justification	16
Modifying the definition of SMRI	19
Senior personnel change reporting requirements	19
 4. Improving the application suitability assessment	21
Policy development to date	21
Current requirements	22
Proposed changes and their justification	23
Application guidance	25
 Appendix 1. Proposed new fit and proper requirement	26
Appendix 2. Proposed new SLC 4C of supply licence	28
Appendix 3. Proposed new B21 of carbon dioxide transport and storage licence...	30
Appendix 4. Proposed new suitability assessment	32
Appendix 5. Proposed new guidance text	36
Appendix 6. Privacy policy	38

Executive summary

As set out in our¹ [Guidance on Supply Licensee Governance Arrangements](#) consultation, senior executives at energy companies are instrumental in setting a culture that protects consumers and supports investment and growth. Strong governance arrangements positively impact the culture of an organisation, improve customer service and drive-up standards. This not only benefits consumers but supports companies in achieving long-term, sustainable success by creating greater shareholder and investor trust, encouraging continued and future investment.

Since 2021, we have introduced measures to strengthen governance arrangements and promote a more financially responsible licensee culture. This includes the introduction of an ongoing obligation on certain licensees to ensure individuals with significant managerial responsibility or influence (SMRIs)² are suitable for their roles.

At present, only gas and electricity suppliers³ and the carbon dioxide transport and storage licence holders have an obligation to ensure that individuals in these roles are ‘fit and proper’⁴ on an enduring basis. For other ‘non-supply’ licences⁵, an assessment is only carried out at the point of licence application.

As company leadership can change over time, we are consulting on a proposal to introduce an ongoing fit and proper requirement across all licences. This would introduce a continuous standard, requiring all licensees to ensure senior personnel remain suitable for their roles beyond the initial application stage.

This change aims to address several issues we have encountered with the single ‘point-in-time’ assessment for non-supply licences. It would also harmonise requirements across licensees Ofgem regulates and align energy regulation more closely with standards in other UK sectors⁶.

We also propose updating the existing ongoing fit and proper requirements for licence holders, as well as the suitability assessment for licence applicants. The proposed changes aim to strengthen the assessment process to ensure it is both robust and proportionate. The changes would also create greater alignment and continuity with the proposed ongoing fit and proper requirement.

We are seeking the views of stakeholders on these proposed changes.

¹ References to the “Authority”, “Ofgem”, “we”, “our” and “us” are used interchangeably in this document. The Authority refers to the Gas and Electricity Markets Authority (GEMA). The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

² “SMRI” is a term defined, as relevant, in paragraphs 2.8, 3.17-3.19 and footnotes 9 and 11.

³ In this document we refer to gas and electricity supply licence holders collectively as “suppliers”.

⁴ The current criteria for judging fit and proper are defined in SLC 4C of the supply licence and B21 of the carbon dioxide transport and storage licence and are set out in more detail in Section 3 of this document.

⁵ Principally those categories of licence set out in paragraph 2.1 below.

⁶ For example, see: [Fitness and Propriety \(F&P\) | FCA](#)

1. Context and rationale for change

This section summarises our proposal to introduce a general, ongoing fit and proper requirement across all energy licence types. This would address the limitations of the current point-in-time assessment by ensuring senior personnel remain suitable throughout the licence term. The proposed changes aim to strengthen governance and support better outcomes for consumers and the market⁷.

- 1.1 The suitability of licence applicants is assessed by Ofgem at application prior to a licence being issued. Amongst other things, we assess all prospective licence holders to determine whether all individuals with significant managerial responsibility or influence (SMRIs) are fit and proper for their roles.
- 1.2 However, currently only gas and electricity suppliers and the carbon dioxide transport and storage (CCS) licence holders have an obligation to ensure that individuals in these roles are fit and proper on an enduring basis. For other licences, this assessment is only carried out at the point of licence application.
- 1.3 As company leadership can change over time, we are consulting on a proposal to introduce an ongoing fit and proper requirement across all licences. This would introduce a continuous standard, requiring all licensees to ensure senior personnel remain suitable for their roles beyond the initial application stage.
- 1.4 In our [Consumer Confidence 2024](#) publication, we previously committed to expanding these requirements to make sure that senior managers at energy companies are suitable, with a view to encouraging behaviour that puts consumers first, and to create consequences for falling short or failing to do so.
- 1.5 In the [Ofgem review call for evidence](#), the government highlighted its aim to raise the minimum standard of service in the energy sector and ensure Ofgem has the tools to take effective, proportionate action when standards fall. This, in its view, includes rebalancing market risks and costs while fostering accountability and a culture of high consumer standards across the entire energy system. We believe these proposals are consistent with those aims.

Limitations of the current single ‘point-in-time’ assessment

- 1.6 Whilst we thoroughly test new licence applicants to ensure the suitability of senior personnel, company management can change. A single ‘point-in-time’

⁷ our principal objectives for the regulation of carbon dioxide transport and storage differ from those for electricity and gas. As set out in Part 1 of the Energy Act 2023, these principal objectives include: protecting the interests of current and future carbon dioxide transport and storage network users; protecting the interests of consumers where they may be impacted by the exercise of our functions; and promoting the economic and efficient development and operation of these networks. Accordingly, references in this document to protecting consumers should, in the context of carbon dioxide transport and storage, be interpreted in line with these different statutory objectives

Consultation Introducing a general ongoing fit and proper requirement

assessment does not provide assurance on an ongoing basis, we have encountered several issues. These include:

- Once a licence has been granted, we have little power to stop a licensee hiring an unsuitable individual into a position of SMRI or to act if such a person becomes unsuitable and should not retain their role.
- We cannot prevent licence applicants who we consider unsuitable to hold a licence at application from purchasing an existing licensed entity to circumvent our suitability assessment.
- Ofgem has limited means to prevent those with a poor track record entering or re-entering the market and working for other types of licensee.

- 1.7 Introducing an ongoing fit and proper person requirement would help resolve these issues by placing a continuing obligation on licensees to ensure that individuals in senior roles remain fit and proper over time, not just at the point a licence is issued. It would also reinforce personal accountability, discourage poor practices and help prevent such behaviours being spread across the energy sector.
- 1.8 Whilst we are confident that most licensees already employ fit and proper persons, this proposed requirement would establish a clear and ongoing obligation for all licensees to do so. It would also provide Ofgem with the power to intervene where they do not.

Promoting consistent high standards across the sector

- 1.9 Ensuring senior executives at energy companies and people in a position of SMRI are suitable for their roles can positively impact the culture of an organisation. It can help strengthen governance arrangements and promote a more financially responsible culture within licensees. This not only benefits consumers but support companies in achieving long-term, sustainable success.
- 1.10 This is why we assess licence applicants for suitability to hold a licence at application and have ongoing fit and proper requirements in the supply and carbon dioxide transport and storage licences. It is also why we intend to introduce an ongoing fit and proper requirement, based upon the supply condition, into our new or future licensing and authorisation regimes.
- 1.11 Many other UK regulators have ongoing fit and proper person requirements on licence holders, some of which stem from legislative powers and others from conditions set out in the licences they issue.
- 1.12 By introducing a general, ongoing fit and proper person requirement to its other licences, Ofgem would be setting clear standards for personal and professional conduct in line with the general national requirements for such regulated activities. This would help uphold public trust, promote responsible business

Consultation Introducing a general ongoing fit and proper requirement

practices, and foster a culture of good governance and effective management across the energy industries that it regulates.

1.13 In this context, this proposed change would not only bring energy licences into alignment but promote greater consistency in regulatory standards across different UK sectors.

1.14 Examples of other regulators fit and proper requirements include:

- The Financial Conduct Authority (FCA) require that those in Senior Management Functions (SMFs) and Certification Staff need to be fit and proper for their roles. Detailed explanation of the requirements are contained in the [Fit and Proper test for Employees and Senior Personnel \(FIT\)](#) part of the FCA Handbook.
- [Regulation 5 of the Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) requires that people who have director level responsibility for the quality and safety of care are fit and proper to carry out those important roles. The Care and Quality Commission oversees this responsibility and provides [guidance on the regulations for service providers and managers](#).
- The [Water \(Special Measures\) Act 2025](#) empowers Ofwat to set a rule requiring water and sewerage companies to only appoint and have in place individuals in senior roles who meet specified standards set by Ofwat on ‘fitness and propriety’. Ofwat has recently issued a [consultation on the introduction of these powers](#).

Purpose of this consultation

1.15 In this consultation, we are seeking views on the following:

- A proposal to introduce an ongoing requirement into non-supply licences, based on an updated supply and CCS licence condition, requiring those licensees to ensure senior personnel are ‘fit and proper’ to occupy their roles on a continuing basis. These are set out in Section 2.
- Proposed changes to the existing ongoing fit and proper requirements for gas and electricity supply licence holders and the carbon dioxide transport and storage licences which are given at condition 4C and condition B21 of those licences respectively. These are set out in Section 3.
- Proposed changes to the existing suitability requirements for licence applicants given at Section 10 of the application form and described in further detail in the application guidance. These are set out in Section 4.

1.16 We are also seeking views on the proposed new fit and proper condition, the draft application form and the draft application guidance segment that we have published alongside this consultation. It would be through these documents that

Consultation Introducing a general ongoing fit and proper requirement

any changes would be implemented, following the outcome of this consultation and any subsequent statutory consultation.

Next steps

- 1.17 The consultation will be open until 31 October 2025. Subject to the responses to this consultation, we intend to proceed to a statutory consultation on these proposals in the winter of 2025.

How to respond

- 1.18 We want to hear from anyone interested in this consultation. Please send your response to Ashley Hassell via licensing@ofgem.gov.uk and reference the name of this consultation.
- 1.19 We have asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can. We will publish non-confidential responses on our website.

Your response, data, and confidentiality

- 1.20 You can ask us to keep your response, or parts of your response, confidential. We will respect this, subject to obligations to disclose information. For example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations, or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 1.21 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you do wish to be kept confidential and those that you do not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we will contact you to discuss which parts of the information in your response should be kept confidential and which can be published. We might ask for reasons why.
- 1.22 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the United Kingdom's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 6.
- 1.23 If you wish to respond confidentially, we will keep your response confidential, but we will publish the number, but not the names, of confidential responses we receive. We will not link responses to respondents if we publish a summary of

Consultation Introducing a general ongoing fit and proper requirement

responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

How to track the progress of a consultation

1. Find the web page for the consultation you would like to receive updates on.
2. Click 'Get emails about this page', enter your email address and click 'Submit'.
3. You will receive an email to notify you when it has changed status.

2. Fit and proper requirements for non-supply licensees

We propose introducing a general, ongoing fit and proper requirement across ‘non-supply’ licences. This would establish a continuous standard, requiring all licensees to ensure senior personnel remain fit and proper persons beyond the initial application. We outline how these changes would be introduced and implemented in practice.

- 2.1 We propose to modify the following ‘non-supply’ licences to introduce an ongoing requirement for those licensees to ensure that any persons in a position of Significant Managerial Responsibility or Influence (SMRI) are fit and proper persons and to carry out regular assessments on them:
- electricity interconnector
 - electricity generation
 - electricity transmission
 - electricity distribution
 - gas interconnector
 - gas transporters
 - gas shipper
 - NESO’s electricity system and gas system planner licences
- 2.2 This would introduce a continuous standard, requiring all licensees to ensure their senior personnel remain suitable for their roles beyond the initial application stage. It would incentivise all licensees to appoint and retain individuals who are suitably qualified to run energy companies. Whilst it would not in itself be a guarantee for good performance, our experience to date shows that introducing a minimum fit and proper person requirement improves governance arrangements and deters poor performance which can otherwise lead to detrimental market or consumer outcomes.
- 2.3 This change would also provide Ofgem the means to take action against a licensee where unfit persons are identified as occupying SMRI positions. We provide further detail on our rationale for this proposed change below.

Proposed ongoing fit and proper requirement

- 2.4 The proposed form of the new ongoing fit and proper requirement condition is shown in Appendix 1. For consistency, this proposed new condition is to be in the same form as the proposed updated supply and carbon dioxide transport and storage licence condition set out in Section 3. For continuity, the criteria are also

Consultation Introducing a general ongoing fit and proper requirement

broadly similar to the proposed new application suitability assessment set out in Section 4.

2.5 If this condition was implemented, it would introduce the following requirements:

- The licensee must not appoint or have in place a person in a position of Significant Managerial Responsibility or Influence⁸ who is not a fit and proper person to occupy that role.
- The licensee must have in place and maintain robust processes, systems and governance to ensure that any person holding a position of Significant Managerial Responsibility or Influence in the licensee is fit and proper to occupy that role.
- The licensee must carry out regular assessments on such persons to ensure that they remain fit and proper to occupy that role.

2.6 In complying with the above requirements, the licensee would be required to give regard to and take account of all the following relevant matters including, but not limited to, whether the individual has:

- **Misconduct or mismanagement:** been responsible for, contributed to or facilitated any misconduct or mismanagement (whether unlawful or not) in any jurisdiction either as an individual, or in relation to a business in which that person was in a position of Significant Managerial Responsibility or Influence.
- **Criminal convictions:** any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering.
- **Insolvency, bankruptcy and CCJs:** any insolvency history (including any period of receivership, administration, compulsory liquidation or creditors voluntary liquidation of a company where the individual was in a position of Significant Managerial Responsibility or Influence within the 12 months prior to the event), undischarged bankruptcy, debt judgements or County Court Judgements.
- **Disqualification:** been disqualified from acting as a director of a company or to any extent from acting in connection with the affairs of a company in any jurisdiction.
- **Connection to a Supplier of Last Resort (SoLR) or Special Administration Regime (SAR) event:** been a person in a position of Significant Managerial Responsibility or Influence at a current or former licensed Gas Supplier or Electricity Supplier in respect of whose Customers' premises the Authority

⁸ "Significant Managerial Responsibility or Influence" would be given the definition set out in paragraph 2.8 of this section of the document.

Consultation Introducing a general ongoing fit and proper requirement

issued a Last Resort Supply Direction, or which had a Special Administrator appointed in respect of it (including where they were a person in a position of Significant Managerial Responsibility or Influence at that licensed Gas Supplier or Electricity Supplier within the 12 months prior to the Last Resort Supply Direction being issued or the appointment of the Special Administration Regime).

- **Action taken by a regulatory body:** been refused, had revoked, restricted, or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body or industry code body in any jurisdiction whether as an individual, or in relation to a business in which that person was in a position of Significant Managerial Responsibility or Influence.
- **Sanctions:** any current designation as a sanctioned person under the Sanctions and Anti-Money Laundering Act 2018 or sanctions from any other jurisdiction.

2.7 The licensee would be required to give particular regard to circumstances in which the relevant person has a background in the energy sector in Great Britain and the previous actions of that person resulted in or contributed towards significant consumer or market detriment.

2.8 We would also insert a definition of ‘Significant Managerial Responsibility or Influence’ into the licences which would be substantially the same definition as currently given in the supply licences, being a person that plays a role in:

- a) the making of decisions about how the whole or a substantial part of a licensee’s or any undertaking’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.

2.9 This would match the proposed new SMRI definition for the supply and carbon dioxide transport and storage licences set out below in paragraphs 3.17-3.19.

Implementation of requirements

2.10 If introduced, as with suppliers currently, we would expect that when assessing individuals, licence holders should evaluate the relevance and impact of any findings and be pragmatic in their judgement. Licensees would be expected to consider the nature of the role in question and the potential for market or consumer harm if it should not be properly discharged.

2.11 The above-named criteria are to be used when considering whether an SMRI is fit and proper but an adverse report against one would not necessarily result in that person being deemed unfit and not appointable or retained.

Consultation Introducing a general ongoing fit and proper requirement

- 2.12 It may be appropriate for licensees to introduce mitigations to minimise the risk that any individual with SMRI may potentially cause or contribute. For instance, they may wish to consider putting controls in place to clarify or limit the scope of a relevant individuals' influence or decision-making ability.
- 2.13 As with the introduction of a fit and proper requirement for supply, we expect most licensees are already acting in line with our proposed new requirements as it is reasonable to expect that any organisation or employer carries out due diligence in appointing or retaining key personnel. For those that are not, the new rules will require them to put appropriate measures in place.
- 2.14 We would be able to take [enforcement action](#) to ensure compliance with the condition. If the risk posed by an individual in a position of SMRI who is not fit and proper could not be sufficiently mitigated or has led to detriment, we could issue an order requiring the licensee to remove the person of concern to resolve the breach if proportionate to do so.

Future licensing requirements

- 2.15 To promote consistency across licensing regimes, we also propose that any licence or authorisation issued in creating a new licence regime also contain a matching fit and proper requirement, subject to any regime specific differences.
- 2.16 As with the carbon dioxide transport and storage licences, it is our intention to introduce an ongoing fit and proper requirement based upon the supply condition into the following new or future licensing and authorisation regimes:
- **Code Managers:** the [consultation on code manager licence conditions](#) issued in May 2025 proposed introducing an ongoing fit and proper requirement amongst a number of controls on code managers' businesses.
 - **Heat Networks:** the draft [heat network authorisation conditions](#) which are the outcome of the joint November 2024 Ofgem and DESNZ consultation [heat networks regulation: implementing consumer protections](#) proposes an ongoing fit and proper requirement based upon condition 4C of the supply licence.
 - **Smart Meter Communication Licence:** we intend that the successor to the current licence will include an ongoing fit and proper requirement. This was confirmed in our [DCC Review Phase 2: Governance arrangements conclusions decision](#) issued in January 2025.
 - **Load Control licence:** a package of Ofgem and DESNZ consultations will be published in November 2025. This will include a draft of the new load control licence, in which there will be an ongoing fit and proper requirement upon licensees when the licence comes into effect in September 2027.

Consultation Introducing a general ongoing fit and proper requirement

Questions

- Q1. Do you agree with our proposal to introduce a general ongoing fit and proper requirement in the 'non-supply' licences named in this section? If not, please explain why, spelling out your reasoning and provide illustrative examples of any concerns.
- Q2. Do you have a view on the proposed draft of the fit and proper requirement condition set out in this section and shown in full in Appendix 1?

3. Improving existing ongoing fit and proper requirements

We propose to improve the existing ongoing fit and proper requirements in the gas and electricity supply and carbon dioxide transport and storage licences by refining the criteria and aligning them more closely with the criteria for the suitability assessment conducted at application. These improvements would lay the groundwork for the new general ongoing fit and proper requirement outlined in the previous section.

- 3.1 Alongside the proposed introduction of a general ongoing fit and proper requirement, we are also proposing updates to the existing requirements for licensees. These updates are intended to serve as the basis for the anticipated broader, future requirement and to ensure consistency across the framework.
- 3.2 The current fit and proper requirements for gas and electricity suppliers and the carbon dioxide transport and storage licences have now been in place for some time. Following ongoing monitoring of their effectiveness, we are proposing changes to clarify and strengthen the requirements.

Policy development to date

- 3.3 As part of the [Supplier Licensing Review](#), Ofgem considered whether it should introduce an ongoing fit and proper requirement for holders of a supply licence. Ofgem published an [update on the ongoing requirements](#) phase of that review in May 2019 and then held a workshop on these in June 2019 for which [workshop summary notes and slides](#) were published in July 2019.
- 3.4 In October 2019, Ofgem issued a [policy consultation on ongoing requirements and exit arrangements](#), followed by a [statutory consultation on ongoing requirements and exit arrangements](#) in June 2020. A [decision on ongoing requirements and exit arrangements](#) was published in November 2020.
- 3.5 Accompanying its decision in November 2020, Ofgem published a [decision notice for modification to gas supply licences](#) and a [decision notice for modification to electricity supply licences](#). These introduced into gas and electricity supply licences a new condition 4C, an ‘ongoing fit and proper requirement’ which came into effect from 18 March 2021.
- 3.6 The ongoing fit and proper requirement was introduced to promote responsible governance, strengthen individual accountability and, as result, to help mitigate the risks of detriment to consumers by ensuring those in relevant senior positions are fit and proper to operate in the market.
- 3.7 In December 2024, the government granted the first carbon dioxide transport and storage licence, which included condition B21, an ‘ongoing fit and proper person requirement’, closely aligned with the requirement set out in condition 4C of the supply licences. Ofgem is the economic regulator for this licence and for the

Consultation Introducing a general ongoing fit and proper requirement

second carbon dioxide transport and storage licence granted by government in April 2025.

Current requirements

Gas and electricity supplier requirements

3.8 The present condition 4C of the gas and electricity supply licences requires:

- **At 4C.1:** The licensee must not appoint or have in place a person in a position of Significant Managerial Responsibility or Influence (SMRI)⁹ who is not a fit and proper person to occupy that role.
- **At 4C.2(a):** the licensee must have and maintain robust processes, systems and governance in place to ensure that any such person is fit and proper to occupy that role
- **At 4C.2(b):** The licensee must carry out regular assessments on such person(s) to ensure that they remain fit and proper to occupy that role.

3.9 In complying with paragraphs 4C.1 to 4C.2, the licensee must have regard to and take account of a series of defined relevant matters set out in paragraphs 4C.3 a-f.

3.10 In fulfilling its requirements under condition 4C the licensee must, under 4C.4 give particular regard to circumstances in which the relevant person has a background in the energy sector in Great Britain and the previous actions of that person resulted in or contributed towards significant consumer or market detriment.

Carbon Dioxide Transport and Storage Licence requirements

3.11 Condition B21 of the [carbon dioxide transport and storage licences](#) also provides a fit and proper requirement which is based on condition 4C in the gas and electricity supply licences.

3.12 All but one of the criteria for assessing whether SMRIs are fit and proper are the same as those set out above for suppliers. However, the existing SoLR criterion has been replaced with a T&SCo of Last Resort Direction criterion.

Proposed changes and their justification

3.13 We want continued assurance that senior managers are fit and proper, and that, in turn, licensees remain suitable to hold their licence. The fit and proper test is a

⁹ “Significant Managerial Responsibility or Influence” is defined in condition 1 of the gas and electricity supply licence, the ‘Definitions for standard conditions’, as meaning “a person that 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”. This is substantially the same definition as at application.

Consultation Introducing a general ongoing fit and proper requirement

key tool in achieving this, as it promotes behaviours that prioritise consumer interests and introduces consequences for those who fall short.

- 3.14 There are currently slight differences in the questions and criteria used to assess the suitability of applicants and those used to determine whether licensees' SMRIs are fit and proper. We believe these differences risk introducing inconsistencies and reducing clarity in meeting the requirements. We are therefore proposing to align the two sets of criteria as far as possible.
- 3.15 We propose to modify the existing ongoing fit and proper requirements in the gas and electricity supply licences to adopt the form set out in Appendix 2. These updates are intended to provide a more robust and proportionate set of criteria, and the reasons for proposed changes are outlined below.
- 3.16 If we update condition 4C in the supply licences, we also intend to modify condition B21 of the Carbon Dioxide Transport and Storage licences to match but retain the addition of the existing T&SCo of Last Resort Direction criterion. The proposed form of the ongoing fit and proper requirement in the Carbon Dioxide Transport and Storage licences is set out in Appendix 3.

Misconduct or mismanagement

- **Currently at 4.3(a):** been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity (or, providing a service elsewhere which, if provided in Great Britain, would be a regulated activity)
- **Proposed as 4C.3(a):** been responsible for, contributed to or facilitated any misconduct or mismanagement (whether unlawful or not) in any jurisdiction either as an individual, or in relation to a business in which that person was in a position of Significant Managerial Responsibility or Influence.
- This criterion has been rewritten to cover a broadened criteria of general misconduct or mismanagement and to remove the ambiguous reference to 'serious misconduct'. This amended criterion would cover misconduct or mismanagement in either a non-regulated or regulated sector that did not result in regulatory action. We believe it is necessary to consider misconduct beyond just a regulated environment, or which has not resulted in formal action by a regulator, in determining if a person in a position of SMRI is fit and proper. However, such action does not automatically make someone unfit.

Insolvency, bankruptcy and CCJs

- **Currently at 4C.3(c):** any insolvency history, including undischarged bankruptcy, debt judgements and County Court Judgements.
- **Proposed at 4C.3(c)** any insolvency history (including any period of receivership, administration, compulsory liquidation or creditors voluntary liquidation of a company where the individual was in a position of Significant

Consultation Introducing a general ongoing fit and proper requirement

Managerial Responsibility or Influence within the 12 months prior to the event), undischarged bankruptcy, debt judgements or County Court Judgements.

- This proposed criterion incorporates some of the wording from the application assessment criteria and other improvements.

Disqualification

- **Currently at 4C.3(d):** been disqualified from acting as a director of a company.
- **Proposed at 4C.3(d):** has been disqualified from acting as a director of a company or to any extent from acting in connection with the affairs of a company in any jurisdiction.
- This proposed criterion also incorporates some of the wording from the application assessment criteria.

Connection to a SoLR event

- **Currently at 4C.3(e):** been a person with Significant Managerial Responsibility or Influence at a current or former licensed Gas Supplier or Electricity Supplier in respect of whose Customers' premises the Authority issued a Last Resort Supply Direction (including where they were a person with Significant Managerial Responsibility or Influence at that licensed Gas Supplier or Electricity Supplier within the 12 months prior to the Last Resort Supply Direction being issued).
- **Proposed at 4C.3(e):** been a person in a position of Significant Managerial Responsibility or Influence at a current or former licensed Gas Supplier or Electricity Supplier in respect of whose Customers' premises the Authority issued a Last Resort Supply Direction, or which had a Special Administrator appointed in respect of it (including where they were a person in a position of Significant Managerial Responsibility or Influence at that licensed Gas Supplier or Electricity Supplier within the 12 months prior to the Last Resort Supply Direction being issued or the appointment of the Special Administration Regime).
- We propose to add the Special Administration Regime (SAR) into the subject of this criterion. We think it is necessary to consider involvement in these as well as Supplier of Last Resort events in assessing whether SMRIs are fit and proper.

Action taken by a regulatory body

- **Currently at 4C.3(f):** been refused, had revoked, restricted or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body in any jurisdiction whether as

Consultation Introducing a general ongoing fit and proper requirement

an individual, or in relation to a business in which that person held Significant Managerial Responsibility or Influence.

- **Proposed at 4C.3(f):** been refused, had revoked, restricted, or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body or any industry code body in any jurisdiction whether as an individual, or in relation to a business in which that person was in a position of Significant Managerial Responsibility or Influence.
- We propose to add mention of industry codes bodies to capture anything that might have been determined or addressed at that level.

Sanctioned individuals

- **Proposed at 4C.3(g):** any current designation as a sanctioned person under the Sanctions and Anti-Money Laundering Act 2018 or sanctions from any other jurisdiction.
- We propose to add sanctions as an explicit criterion for consideration of fit and proper. Ofgem has a duty to prevent sanctioned individuals gaining access to economic resources and licence holders have a legal duty to comply with sanctions legislation.

Modifying the definition of SMRI

- 3.17 We propose amending the definition of Significant Managerial Responsibility or Influence used in the licence to ensure it has full applicability for the proposed fit and proper criteria set out above.
- 3.18 The proposed amended definition would be substantially the same as currently given in the supply and carbon dioxide transport and storage licences, save for the addition of “or any undertaking’s” as currently stated in the definition at application.
- 3.19 This being the case, a person with Significant Managerial Responsibility or Influence would be defined as being a person that plays a role in:
- a) the making of decisions about how the whole or a substantial part of a licensee’s or any undertaking’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.

Senior personnel change reporting requirements

- 3.20 In addition to condition 4C, gas and electricity supply licences have a requirement at condition 19AA to notify Ofgem regarding significant commercial or personnel developments.

Consultation Introducing a general ongoing fit and proper requirement

- 3.21 We do not propose to update or modify the requirement at condition 19AA of those licences for suppliers to provide Ofgem a notification when certain personnel developments occur which exists. Nor do we propose to extend these requirements to other categories of licence.
- 3.22 However, two of the notification requirements relate to the proposals presented here:
- The requirement at 19AA(f) to notify Ofgem where there is a reasonable prospect that there will be a change in any Person with Significant Control¹⁰ in respect of the licensee
 - The requirement at 19AA(g) to notify Ofgem where there is a reasonable prospect that there will be a change in any Person with Significant Managerial Responsibility or Influence in respect of the licensee
- 3.23 In fulfilling those requirements, the licensee is at condition 19AA.6 required to “have regard to any guidance on SLC 19AA which, following consultation, the Authority may from time-to-time revise”.
- 3.24 That [significant commercial developments and senior personnel changes guidance](#) provides for a [change to senior personnel checklist](#) which will need to be updated as the questions given relate to the present fit and proper assessment criteria given in licence condition 4C. Therefore, if these proposals are implemented, the senior personnel checklist will be updated to reflect the new fit and proper assessment criteria.

Questions

- Q3. Do you agree with our proposed new fit and proper assessment criteria?
- Q4. Should different or additional assessment criteria be used?

¹⁰ “Person with Significant Control” is defined in the definitions for condition 19AA of the gas and electricity supply licences at 19AA.7 as having the same meaning as under [section 790C of the Companies Act 2006](#).

4. Improving the application suitability assessment

We are proposing changes to improve the existing procedures and requirements for the assessment of suitability at the point of application. These changes aim to strengthen the assessment process to ensure it is both robust and proportionate. The changes would also create greater alignment and continuity with the proposed ongoing fit and proper requirement.

- 4.1 As part of our current licence application process, applicants must submit details of certain categories of senior personnel in relation to their businesses for Ofgem to establish if the applicant would be suitable to hold a licence.
- 4.2 These requirements have been in place for several years. Following continued monitoring of their effectiveness, we are now proposing updates to clarify and strengthen them. The proposed changes also aim to ensure greater consistency with the proposed future ongoing fit and proper requirements.
- 4.3 Establishing a single set of criteria for assessing both applicant suitability and whether licensees' SMRIs are fit and proper would create a consistent and repeatable test. This would simplify administration and enable licensees to apply the same assessment on an ongoing basis, providing continued assurance of their suitability to hold a licence.

Policy development to date

- 4.4 Ofgem is required to assess any licence application in a manner that it considers is best calculated to further its principal objective of protecting the interests of existing and future energy consumers. We will not issue a licence to an applicant if we consider that doing so would undermine the interests of current or future energy consumers.
- 4.5 As part of its application assessment processes, Ofgem has long asked an applicant to provide details of its senior personnel and persons in positions of control, and to answer questions concerning their suitability to hold a licence. As part of the [Supplier Licensing Review](#), Ofgem issued [final proposals on entry requirements](#) in April 2019, proposing additional suitability disclosures from all applicants.
- 4.6 Alongside this, Ofgem issued a [consultation on new applications regulations, application forms and guidance document](#) in April 2019 to introduce these changes. A [decision on new applications regulations and guidance document](#) was then published in June 2019 to confirm these changes and their final form.

Current requirements

- 4.7 The [Gas Application Regulations](#) and the [Electricity Application Regulations](#) (the ‘Application Regulations’) published in 2019 introduced the current [gas and electricity licence application forms](#) (the ‘application forms’) which require licence applicants to provide the details of the named categories of senior personnel as relevant for each question.
- 4.8 In Section 10 of the application forms, the applicant is asked to answer a series of questions concerning relevant matters of possible concern to determine their suitability to hold the licence for which they have applied.
- 4.9 The applicant is asked to provide a response to all questions regarding all the following as “any person named in this application”. These are collectively labelled as a ‘relevant person’ at paragraph 6.12 of the existing [licence application guidance](#).
- The applicant’s directors in Section 3
 - Directors of any ultimate holding company in Section 4
 - Directors of any parent undertaking in Section 5
 - Persons in effective control of the applicant in Section 6
 - Shareholders with a shareholding of more than 20% in Section 7
- 4.10 The applicant is required to provide details of any person with significant managerial responsibility or influence (SMRI)¹¹ at question 10.7 and must answer all questions in relation to them. Then, in answering questions 10.5, 10.6(a) and 10.6(b), the applicant is required to provide the details of and answer questions regarding any ‘related person’¹².
- 4.11 We assess whether all senior personnel working for licence applicants are suitable to hold a licence, taking account of any disclosures or adverse information uncovered in respect of the applicant. Where we determine that such senior personnel are not suitable, we give the applicant the opportunity to address our concerns but ultimately can refuse to grant a licence if the issues identified are not resolved.

¹¹ “significant managerial responsibility or influence” is defined in Regulation 3 of the Application Regulations as “a person who plays a role in (a) the making of decisions about how the whole or a substantial part of an undertaking’s activities are to be managed and organised, or (b) the actual managing or organising of the whole or a substantial part of those activities”.

¹² “related person” is defined in Regulation 3 of the Application Regulations as “meaning (a) in relation to an applicant who is the principal undertaking, a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of the parent undertaking of the principal undertaking, in each case within the meaning of section 1162 and Schedule 7 of the Companies Act 2006; and (b) in relation to any applicant (including such an undertaking), a connected person of the applicant within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992”.

Proposed changes and their justification

- 4.12 There are currently some differences between the questions and criteria used to assess the suitability of potential licence holders at the point of application and those used to assess whether a potential licensee's SMRIs are fit and proper once a licence has been granted. It is our view that these differences risk introducing inconsistencies and reducing clarity in the application processes.
- 4.13 To address this, we propose aligning the suitability application assessment criteria with those applied to assess whether a licensee's SMRIs are fit and proper as set out in Section 3 above. We also propose re-ordering the questions in the application form to improve their flow and clarity. In addition, we propose removing the list of persons assessed from each question and instead stating this before a series of questions related to those persons.
- 4.14 As with the proposed changes to the existing ongoing fit and proper assessment criteria set out in the previous section, the following provides a summary of the proposed changes to the application assessment, along with a justification for each. Given the aim of aligning the two sets of criteria, the rationale for these changes is consistent with those in Section 3.

Criminal convictions

- **Currently at question 10.1:** Do any of the persons named in the application (or any person with significant managerial responsibility or influence in the applicant) have any criminal convictions in any jurisdiction?
- **Proposed as question 10.2:** Does any such person have any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering?
- For consistency, we have decided to replace the application criterion with the criminal convictions criterion from the proposed new ongoing fit and proper requirements set out in Section 3.

Insolvency, bankruptcy and CCJs

- **Currently at question 10.3:** Provide a statement that none of the persons named in the application (or any person with significant managerial responsibility or influence in the applicant): is an undischarged bankrupt; is, or has been, subject to insolvency proceedings (including any period of receivership or administration in connection with the affairs of a company); or is, or has been, subject to any County Court Judgements (CCJs) in any jurisdiction; or, provide details of any such bankruptcy/insolvency/CCJs.
- **Proposed as question 10.3:** Does any such person have any insolvency history (including any period of receivership, administration, compulsory liquidation or creditors voluntary liquidation of a company where the individual was in a position of significant managerial responsibility or

Consultation Introducing a general ongoing fit and proper requirement

influence within the 12 months prior to the event), undischarged bankruptcy, debt judgements or County Court judgements?

- This question has been simplified and is based on the proposed criterion for the same subject from the proposed licence conditions set out in Section 3.

Connection to a SoLR event

- **Currently at question 10.4:** Has any person named in this application (or any person with significant managerial responsibility or influence in the applicant) been a director, shareholder or person with significant managerial responsibility or influence at a gas or electricity supply company which triggered a Supplier of Last Resort event either at the time of the Supplier of Last Resort event or within the 12 months preceding the Supplier of Last Resort event?
- **Proposed as question 10.5:** Has any such person been in a position of significant managerial responsibility or influence at a current or former licensed gas or electricity supplier which triggered a Supplier of Last Resort event, or which had a Special Administration Regime appointed in respect of it (including where they were a person in a position of significant managerial responsibility or influence at that licensed gas or electricity supplier within the 12 months prior to the Supplier of Last Resort event or the appointment of the Special Administration Regime)?
- As with the proposals for the ongoing fit and proper requirement set out in Section 3, we propose to add the Special Administration Regime (SAR) into the subject of this question. We think it necessary to consider involvement in these as well as SoLRs in conducting our assessment of suitability.

Sanctions

- **Proposed as question 10.6:** Does any such person have any current designation as a sanctioned person under the Sanctions and Anti-Money Laundering Act 2018 or sanctions from any other jurisdiction?
- As with the proposed new fit and proper requirement outlined in Section 3, we propose to add sanctions as an explicit consideration for assessing applicant suitability. Ofgem has a duty to prevent sanctioned individuals gaining access to economic resources and licence holders have a legal duty to comply with sanctions legislation.

Misconduct or mismanagement

- **Proposed as question 10.7:** Has any such person been responsible for, contributed to or facilitated any misconduct or mismanagement (whether unlawful or not) in any jurisdiction either as an individual, or in relation to a business in which that person was in a position of significant managerial responsibility or influence?

Consultation Introducing a general ongoing fit and proper requirement

- This previously only appeared as one of the matters to be used in assessing licensee's SMRIs for fit and proper, but we propose to introduce it here too in the same form. We believe it is necessary to consider misconduct in assessing the suitability of applicants.

4.15 The proposed new form setting out the re-ordered and amended application assessment criteria accompanies this consultation as Appendix 4. To introduce these proposed changes, we would update the application forms which are attached to the Application Regulations as a schedule. For that purpose, we would make new statutory instruments detailing the changes to the application forms at the conclusion of our full consultation process.

4.16 We consider that the proposed additions and changes to the suitability assessment questions are proportionate and provide a robust and reasonable set of criteria for that purpose.

Application guidance

4.17 We also propose to update the existing [licence application guidance](#) to set out a summary of our new requirements. The proposed new section of the application guidance accompanies this consultation as Appendix 5.

Questions

- Q5. Do you agree with our proposed new suitability application criteria?
- Q6. Should different or additional assessment criteria be used?
- Q7. Do you have a view on the accompanying documents related to the proposals?

Appendix 1. Proposed new fit and proper requirement¹³

- A1.1 The licensee must not appoint or have in place a person in a position of Significant Managerial Responsibility or Influence who is not a fit and proper person to occupy that role.
- A1.2 The licensee must:
- a) have in place and maintain robust processes, systems and governance to ensure that any person holding a position of Significant Managerial Responsibility or Influence in the licensee is fit and proper to occupy that role; and
 - b) carry out regular assessments on such person(s) to ensure that they remain fit and proper to occupy that role.
- A1.3 In complying with paragraphs A1.2(a) to A1.2(b), the licensee must have regard to and take account of all relevant matters including, but not limited to, whether the individual has:
- a) been responsible for, contributed to or facilitated any misconduct or mismanagement (whether unlawful or not) in any jurisdiction either as an individual, or in relation to a business in which that person was in a position of Significant Managerial Responsibility or Influence;
 - b) any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering;
 - c) any insolvency history (including any period of receivership, administration, compulsory liquidation or creditors voluntary liquidation of a company where the individual was in a position of Significant Managerial Responsibility or Influence within the 12 months prior to the event), undischarged bankruptcy, debt judgements or County Court Judgements;
 - d) been disqualified from acting as a director of a company or to any extent from acting in connection with the affairs of a company in any jurisdiction;
 - e) been a person in a position of Significant Managerial Responsibility or Influence at a current or former licensed Gas Supplier or Electricity Supplier in respect of whose Customers' premises the Authority issued a Last Resort Supply Direction, or which had a Special Administrator appointed in respect of it (including where they were a person in a position of Significant Managerial Responsibility or Influence at that licensed Gas Supplier or Electricity Supplier within the 12 months prior to the Last Resort Supply

¹³ This new fit and proper requirement is proposed to be added to those licences named in paragraph 2.1 of this document for the reasons set out in Section 2.

Consultation Introducing a general ongoing fit and proper requirement

Direction being issued or the appointment of the Special Administration Regime).

- f) been refused, had revoked, restricted, or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body or industry code body in any jurisdiction whether as an individual, or in relation to a business in which that person was in a position of Significant Managerial Responsibility or Influence;
- g) any current designation as a sanctioned person under the Sanctions and Anti-Money Laundering Act 2018 or sanctions from any other jurisdiction.

A1.4 The licensee must give particular regard to circumstances in which the relevant person has a background in the energy sector in Great Britain and the previous actions of that person resulted in or contributed towards significant consumer or market detriment.

Appendix 2. Proposed new SL 4C of supply licence

- 4C.1 The licensee must not appoint or have in place a person in a position of Significant Managerial Responsibility or Influence who is not a fit and proper person to occupy that role.
- 4C.2 The licensee must:
- (a) have in place and maintain robust processes, systems and governance ~~in place~~ to ensure that any person holding a position of Significant Managerial Responsibility or Influence in the licensee is fit and proper to occupy that role; and
 - a) carry out regular assessments on such person(s) to ensure that they remain fit and proper to occupy that role.
- 4C.3 In complying with paragraphs 4C.1 to 4C.2, the licensee must have regard to and take account of all relevant matters including, but not limited to, whether the individual has:
- a) been responsible for, contributed to or facilitated any ~~serious~~ misconduct or mismanagement (whether unlawful or not) ~~in the course of carrying out a regulated activity (or, providing a service elsewhere which, if provided in Great Britain, would be a regulated activity)~~ in any jurisdiction either as an individual, or in relation to a business in which that person was in a position of Significant Managerial Responsibility or Influence;
 - b) any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering;
 - c) any insolvency history; ~~(including any period of receivership, administration, compulsory liquidation or creditors voluntary liquidation of a company where the individual was in a position of Significant Managerial Responsibility or Influence within the 12 months prior to the event)~~ undischarged bankruptcy, debt judgements and County Court judgements;
 - d) been disqualified from acting as a director of a company or to any extent from acting in connection with the affairs of a company in any jurisdiction;
 - e) been a person in a position of ~~with~~ Significant Managerial Responsibility or Influence at a current or former licensed Gas Supplier or Electricity Supplier in respect of whose Customers' premises the Authority issued a Last Resort Supply Direction, or which had a Special Administrator appointed in respect of it (including where they were a person with Significant Managerial Responsibility or Influence at that licensed Gas Supplier or Electricity Supplier within the 12 months prior to the Last Resort Supply Direction being issued or the appointment of the Special Administration Regime);

Consultation Introducing a general ongoing fit and proper requirement

- f) been refused, had revoked, restricted or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body or industry code body in any jurisdiction whether as an individual, or in relation to a business in which that person held Significant Managerial Responsibility or Influence;
- g) any current designation as a sanctioned person under the Sanctions and Anti-Money Laundering Act 2018 or sanctions from any other jurisdiction.

4C.4 The licensee must give particular regard to circumstances in which the relevant person has a background in the energy sector in Great Britain and the previous actions of that person resulted in or contributed towards significant consumer or market detriment.

Appendix 3. Proposed new condition B21 of carbon dioxide transport and storage licence

Introduction

21.1 The purpose of this condition is to set out requirements so that any person who has a certain level of responsibility or influence in relation to the Licensee meets certain "fit and proper person" requirements.

Structure of this condition

21.2 This condition is structured as follows:

- a) Part A sets out the general obligations regarding ~~the appointment of a persons~~in a position of Significant Managerial Responsibility or Influence; and
- b) Part B sets out the matters to be taken into account in applying the fit and proper person test.

Part A: General obligations

21.3 The Licensee must not appoint or have in place a person in a position of Significant Managerial Responsibility or Influence who is not a fit and proper person to occupy that role.

21.4 The Licensee must:

- a) have in place and maintain robust processes, systems and governance ~~in place~~ to ensure that any person holding a position of Significant Managerial Responsibility or Influence in the Licensee is fit and proper to occupy that role; and
- b) carry out regular assessments on such person(s) to ensure that they remain fit and proper to occupy that role.

Part B: Matters to be taken into account in applying the fit and proper person test

21.5 In complying with Standard Condition B~~Error! Reference source not found.~~ and B0, the Licensee must:

- a) have regard to and take account of all relevant matters including, but not limited to, whether the individual has:
 - (i) been responsible for, contributed to or facilitated any ~~serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity (or, providing a service elsewhere which, if provided in Great Britain, would be a regulated activity)~~ in any jurisdiction either as an individual, or in relation to a

Consultation Introducing a general ongoing fit and proper requirement

business in which that person was in a position of Significant Managerial Responsibility or Influence;

- (ii) any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering;
 - (iii) any insolvency history; (including any period of receivership, administration, compulsory liquidation or creditors voluntary liquidation of a company where the individual was in a position of Significant Managerial Responsibility or Influence within the 12 months prior to the event) undischarged bankruptcy, debt judgements and County Court judgements;
 - (iv) been disqualified from acting as a director of a company or to any extent from acting in connection with the affairs of a company in any jurisdiction;
 - (v) been a person in a position of ~~With~~ Significant Managerial Responsibility or Influence at a current or former T&S Licensee in respect of whose T&S Network the Regulator issued a T&SCo of Last Resort Direction or which had a Special Administrator appointed in respect of it (including where they were a person with Significant Managerial Responsibility or Influence at that T&S Licensee within the 12 months prior to the T&SCo of Last Resort Direction being issued or the appointment of the Special Administration Regime); ~~and/or~~
 - (vi) been refused, had revoked, restricted or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body or industry code body in any jurisdiction whether as an individual, or in relation to a business in which that person held Significant Managerial Responsibility or Influence; ~~and~~
 - (vii) any current designation as a sanctioned person under the Sanctions and Anti-Money Laundering Act 2018 or sanctions from any other jurisdiction.
- b) give particular regard to circumstances in which the relevant person has a background in the carbon capture and storage sector in the United Kingdom and if the previous actions of that person resulted in or contributed towards significant market detriment.

Appendix 4. Proposed new suitability assessment

10.1 Please provide the full name, date of birth and position of all persons with significant managerial responsibility or influence for the applicant:

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

☐ List of details for all persons with significant managerial responsibility or influence in respect of the applicant.

The following set of five questions in this section must be answered in relation to the following categories of person as relevant:

- (i) any 'relevant person' associated with the applicant being all those persons named in the preceding sections of this application
- (ii) any person with significant managerial responsibility or influence for the applicant
- (iii) any related person

10.2 Does any such person have any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering? If YES, please provide their name and any details:

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

☐ Statement on criminal convictions included as an attachment.

10.3 Does any such person have any insolvency history (including any period of receivership, administration, compulsory liquidation or creditors voluntary liquidation of a company where the individual was in a position of significant managerial responsibility or influence within the 12 months prior to the event), undischarged bankruptcy, debt judgements or County Court judgements? If YES, please provide their name and any details:

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

☐ Statement on bankruptcy/insolvency/CCJs included as an attachment.

10.4 Has any such person been disqualified from acting as a director of a company or to any extent from acting in connection with the affairs of a company in any jurisdiction? If YES, please provide their name and any details:

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

☐ Statement on disqualification included as an attachment.

10.5 Has any such person been in a position of significant managerial responsibility or influence at a current or former licensed gas or electricity supplier which triggered a Supplier of Last Resort event, or which had a Special Administration Regime appointed in respect of it (including where they were a person in a position of significant managerial responsibility or influence at that licensed gas or electricity supplier within the 12 months prior to the Supplier of Last Resort event or the appointment of the Special Administration Regime)? If YES, please provide their name and any details:

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

Consultation Introducing a general ongoing fit and proper requirement

☐ Statement on previous Supplier of Last Resort or Special Administration Regime event(s) included as an attachment.

10.6 Does any such person have any current designation as a sanctioned person under the Sanctions and Anti-Money Laundering Act 2018 or sanctions from any other jurisdiction? If YES, please provide their name and any details:

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

☐ Statement on sanctions included as an attachment.

The following set of three questions in this section must be answered in relation to those three categories of person named above as well as the entity applying for the licence or any entity in its company structure as relevant.

10.7 Has any such person been responsible for, contributed to or facilitated any misconduct or mismanagement (whether unlawful or not) in any jurisdiction either as an individual, or in relation to a business in which that person was in a position of significant managerial responsibility or influence? If YES, please provide their name and any details:

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

☐ Statement on misconduct or mismanagement included as an attachment.

10.8 Has any such person been refused, had revoked, restricted, or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body or industry code body in any jurisdiction whether as an individual, or in relation to a business in which that person was in a position of significant managerial responsibility or influence? If YES, please provide their name and any details:

Consultation Introducing a general ongoing fit and proper requirement

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

☐ Statement on regulatory action taken by a regulatory or industry code body included as an attachment.

10.9 Has any such person ever been found to be in breach of Articles 101 or 102 of the Treaty on the Functioning of the EU, Chapter I or Chapter II of the Competition Act 1998 or competition law in any other jurisdiction whether as an individual, or in relation to a business in which that person was in a position of significant managerial responsibility or Influence? If YES, please provide their name and any details:

If you intend to provide these details as an attachment, please check the box below and include this information with your application.

☐ Statement on competition law infringement(s) included as an attachment.

Appendix 5. Proposed new guidance text

- A5.1 As a key part of our application assessment, we will assess whether the applicant is suitable to be granted the licence that they have applied for.
- A5.2 We expect all applicants to positively demonstrate their suitability to hold a licence and where the applicant is not deemed suitable on the basis of our assessment, we are likely to propose that the application is refused.
- A5.3 We may use a range of resources to verify the information provided including publicly available sources and material we hold in accordance with our regulatory activities, statutory duties and other legislative requirements.
- A5.4 To deliver our assessment, we will consider where relevant any disclosures or adverse information brought to light in respect of the following categories of person:
- Any ‘relevant person’ associated with the applicant:
 - The directors provided in Section 3
 - The directors of any ultimate holding company provided in Section 4
 - The directors of any parent undertaking provided in Section 5
 - Persons in effective control provided in Section 6
 - Any shareholder with a holding of 20% or more in Section 7
 - Any person in a position of Significant Managerial Responsibility or Influence (SMRI) in respect of the applicant as defined in the Application Regulations
 - Any Related Person as defined in the Applications Regulations
- A5.5 Question 10.1 should be read as requiring the disclosure of all persons in a position of Significant Managerial Responsibility or Influence whether they have already been disclosed for the purposes of completing preceding sections of the application form or not.
- A5.6 In questions 10.2 to 10.9 of the application form, disclosures should be made for all those persons above as relevant against the following criteria:
- Criminal and civil action at question 10.2
 - Insolvency, bankruptcy and CCJs at question 10.3
 - Disqualification at question 10.4
 - Connection to a SoLR or SAR event at question 10.5
 - Sanctions at question 10.6

Consultation Introducing a general ongoing fit and proper requirement

- Misconduct or mismanagement at question 10.7
 - Action taken by a regulatory or codes body at question 10.8
 - Competition law infringements at question 10.9
- A5.7 Where an adverse disclosure is made by the applicant in their application, the applicant must explain why any person for whom a disclosure has been made is fit and proper. The applicant must demonstrate how the criteria of any disclosure have been satisfactorily addressed and why they consider that they are suitable to hold the licence they have applied for.
- A5.8 Where adverse disclosures are made in respect of any person in a position of Significant Managerial Responsibility or Influence this will be taken seriously. If we determine any applicant is not suitable to be granted a licence, we will explain clearly the reasons for this in our decision.
- A5.9 However, we will not automatically refuse an application where adverse disclosures are made other than where any person in a position of Significant Managerial Responsibility or Influence has any current designation as a sanctioned person under the Sanctions and Anti-Money Laundering Act 2018 because Ofgem has a duty to prevent sanctioned individuals gaining access to economic resources and licence holders have a legal duty to comply with sanctions legislation.
- A5.10 All applicants must be open and honest in their engagement with Ofgem and must be proactive in providing relevant information including when it changes during our considering an application. Any failure to name any person falling into the categories above or to make a disclosure in respect of the given criteria will contribute to our assessment of the applicant's suitability to hold a licence. Additionally, where there is evidence that incorrect information has been provided, this may lead to the refusal of the licence application.

Appendix 6. Privacy policy

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

Information: Include here all organisations outside Ofgem who will be given all or some of the data. There is no need to include organisations that will only receive anonymised data. If different organisations see different set of data then make this clear. Be as specific as possible.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for (be as clear as possible but allow room for changes to programmes or policy. It is acceptable to give a relative time e.g. ‘six months after the project is closed’)

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it

Consultation Introducing a general ongoing fit and proper requirement

- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas (Note that this cannot be claimed if using Survey Monkey for the consultation as their servers are in the US. In that case use “the Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this”.

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system. (If using a third party system such as Survey Monkey to gather the data, you will need to state clearly at which point the data will be moved from there to our internal systems.)

10. More information For more information on how Ofgem processes your data, click on the link to our “[ofgem privacy promise](#)”.