

Consultation: Energy Networks Ring Fence Review

Issued by: Ofgem

Territorial extent: Great Britain

Response author: SGN

Deadline for responding: 15th January 2026



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15th January 2026

Energy Networks Ring Fence Review

Thank you for the opportunity to respond to the above consultation¹ in relation to the ring fence licence conditions. Our response follows on from that provided by SGN to Ofgem's Call for Input², issued in November 2024.

SGN manages the network which distributes natural and green gas to approximately six million homes and businesses across Scotland and southern England. Our pipes deliver gas safely, reliably and efficiently to each of these customers, doing so by balancing asset health against good value for money.

We also remain firm that our commitment to protecting our customers' interests must remain at the forefront when adapting the licences in any way to ensure that the specific challenges are well understood, deliver good customer outcomes and avoid any adverse unintended consequences.

As stated in SGN's response to our Call for Input, we remain in agreement with the stated objective of the ring fence arrangements in "*managing the risk of a licensee getting into financial distress and... [protecting]...the regulated asset base and therefore consumers*". However, we see no evidence that either the current controls are insufficient to provide this protection, nor that the non-regulated activities of the licensees are increasing in 'scale of risk', and hence at present, we do not see the justification for any higher intervention.

It remains our view that the Ring Fence Review should aim to ensure; (i) that the financial viability of the regulated business is not affected by any underperformance of non-regulated businesses within the Group; (ii) that non-regulated businesses cannot gain an unfair advantage in competitive markets by utilising assets and services from the regulated businesses at below market prices, and (iii) that customers of the regulated business are protected from the transfer of assets that are not arms-length.

The Ring Fence Review should not be used as a mechanism to introduce additional financial resilience protections, either from downside risks associated with the regulated business carrying out its licensed activities or risks introduced through policy changes such as asset stranding and cost recovery risk. It is also important that the Ring Fence Review should not look to create additional hurdles for licensed entities to carry out normal business activities that are not affected by group structures or transactions carried out on an arm's length basis.

The key changes proposed in this consultation predominately fall into the second category of increasing financial resilience protections rather than improving the ringfence, and we are concerned that the ring fence

¹ [Energy Networks Ring-fence Review consultation | Ofgem](#)

² [Energy Networks ring fence review \(ofgem.gov.uk\)](#)

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is now being established as a tool to supplement the financeability duty of the regulator, which is clearly not its purpose. We believe financeability issues (such as those arising from the energy transition) should be dealt with at source and through appropriate regulatory design. Relying on more prescriptive ring fence processes do not address the root cause of the financeability concern and increases risk to the Investor. The licensees ringfence duties and Ofgem's regulatory finance duties should not be conflated.

When considering the Ring Fence Review consultation, there are some more specific points that need to be recognised. These are;

- There is a risk of unintended consequences as a result of trying to drive clarity in the definition of the regulatory ringfence, which could unintentionally constrain both positive and negative outcomes, such as the ability to engage with third parties to promote innovative or whole system outcomes. We are concerned that a need for a definition will introduce more ambiguity rather than create more clarity.
- A lot of the proposals appear to add more process into existing licence terms without explaining the need for change or the benefit that the additional process is going to deliver. Checklists, as an example, appear to be duplicative and unnecessary, particularly if they mask genuine feedback and discussion on what can be improved and what good practice looks like. Companies should have flexibility in how they implement financial policy (which we believe Ofgem support) or deploy appropriate corporate governance for the particular circumstances of their business and the more extensive use of checklists or regulatory consents risks undermining this flexibility.
- The Companies Act is already prescriptive on restrictions relating to distributions, and the existing availability of resource requirements already place further restrictions on distributions from Ofgem licensed entities. Changes to certification of availability of resources to cover longer time horizons risks inadvertently creating a requirement for licensees to hold considerable cash balances to create a buffer for unforeseen regulatory underperformance and/or debt market sentiment further into the future. This is inefficient, ultimately increasing the cost of capital which negatively impacts consumers in the long run and undermines the investability of the sector. We believe this is not Ofgem's intention and suggest these concerns remain a key focus throughout the review.
- The proposals to extend the role of SIDs to include specific duties without full consideration of how it may impact board dynamics. When Independent Directors (SID's) were initially introduced³ including specific duties in the role of SIDs was specifically decided against, as it considered to risk undesirable effects of undermining board unity. Given this original conclusion and the consideration that went into it, it would be good to understand what information is leading GEMA to change their conclusion – we are not aware of any more recent evidence that would drive a different conclusion.
- That any changes to the role of SIDs remains consistent with their statutory duties as a company director as defined within the Companies Act. The proposed change for a SID to 'act in the best interest of the consumer' is in clear conflict with Duty 172 of the Companies Act, for Directors to promote the success of the company.
- That the move to an absolute requirement (must or best endeavours) for holding one or more investment grade ratings creates additional and unique risk. As a point of principle, an absolute obligation should only be applied where the Company has the ability to take effective actions to deliver that obligation at a reasonable cost. In the case of ratings, the ratings an agency sets will be

³ <https://www.ofgem.gov.uk/sites/default/files/docs/2011/03/ring-fence-mods-consultation.pdf>, para 4.12

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impacted by regulatory and government policy, the approach of the rating agency along with the financial resilience of the licensee.

- The ringfence proposals are based on a licence that applies inconsistent definitions of credit ratings across the rating agencies for the ringfence conditions. We believe Fitch Senior Unsecured rating is the relevant definition for the licence (which Fitch themselves support) rather than the Issuer Default Rating which is one notch lower. This risks imposing artificially tighter constraints on licensees such as dividend locks where there is not the financial resilience concern to trigger this action. We do not believe there has been meaningful dialogue from Ofgem on this point, which has been raised consistently over the past few years. This review is an ideal opportunity to do this.

It is important to recognise that the SGN board and the Independent Directors take their obligations regarding the financial ringfence and roles of the independent directors extremely seriously and that there already exists a suite of protections in addition to the ring fence, such as the Company's Act, Accounting policy, Statutory Audits, Bank Covenants and Credit Ratings which provide strong protections. Given these existing protections, it is important to avoid significant changes in the absence of a clearly identified ringfence concerns or risks and to mitigate against the risk of disproportionate administrative burdens.

SGN recognises that it has been a significant period since the last review of the ring-fence conditions, and that such periodic reviews are appropriate. However, more frequent reviews and changes risk creating instability and uncertainty that undermines investor confidence. We also flag that the timing of this review is sub-optimal, given concurrent consultations relating to similar financial areas (specifically, the Debt Relief Support Scheme Statutory Consultation⁴), the wider RIIO-3 licence drafting consultation⁵ and the recent release of the RIIO-3 Final Determinations. This does not facilitate a transparent process in which stakeholders can assess all aspects of the licence in its entirety.

Given this, it is essential that these responses are fully debated and hence Networks should be fully involved in workshops going forward, especially considering the lack of feedback given on points raised in this area throughout the RIIO-GD3 process. We also believe significant industry involvement in licence drafting is required, given the preliminary nature of the drafting so far and that licence drafting should only implement policy decisions agreed through the wider review.

Should you require any further clarification, please do not hesitate to contact me via email at David.handley@sgn.co.uk

Yours faithfully,

David Handley

Director of Regulation and Strategy
SGN

⁴ [Debt Relief Scheme: Statutory Consultation](#)

⁵ [Modifications to the RIIO-3 licences and associated documents | Ofgem](#)

SGN Response to Consultation Questions

Q1. Do you agree with the definition provided for the purpose of the *regulatory ring-fence*?

SGN agree in principle with the regulatory ring-fence and agree that it should be reviewed on a regular basis. We believe that the basic structure and objective can be expressed in a relatively simple set of principles, as stated in the consultation “to protect essential network services in the interest of existing and future customers” and to “reduce the risk of licensee financial distress by placing constraints on licensees to ensure resources are available for regulated activities”. However, SGN do not consider it necessary or appropriate to create a defined “regulatory ring-fence” term and to do so could create risks and unintended consequences where the definition is in conflict with other points of policy.

The proposed definition set out in Appendix A1.5 has been reproduced below for reference:

Appendix 1.5 Restriction of activity and financial ring fence.

Definition: “Regulatory ring-fence” means the set of licence conditions and obligations designed to ensure that:

- *the licensee maintains sufficient legal, financial and operational independence from other entities within its corporate structure such that the licensee is protected from exposure to financial and operational risks arising from the activities or financial distress of other entities within its corporate structure;*
- *the assets and resources of the licensee are used solely for the purpose of delivering regulated network services, are not exposed to material unrelated risks;*
- *Cross-subsidisation, asset transfers or other financial transactions that could compromise the licensee’s ability to meet its obligations under the licence are restricted;*
- *the Licensee has adequate financial and operational resources to meet its obligations under the licence; and*
- *to minimise the likelihood and mitigate the impact of financial distress within the corporate group on the licensee.*

Whilst we fully recognise each of the points set out in and their applicability to the licenced network entities, they are principles and we do not think that they constitute a definition. If this was introduced as a definition, then there is a risk of a series of unintended consequences. For example;

- The second term “assets and resources of the licensee **are used solely** for the purpose of delivering regulated network services” could appear to rule out de-minimise activities that can enable greater efficiency in use of network assets and be to the benefit of customers by reducing costs. Similarly, it undermines the ability for networks to engage in innovation activities.

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- The final phrase of the third term “*the assets and resources of the licensee are used solely for the purpose of delivering regulated network services, **are not exposed to material unrelated risks**;*” clearly does not work in a world where government policy is aspiring to migrate customers away from the gas networks and therefore cannot work within the definition of a ringfence.
- The fourth term “*the Licensee **has adequate financial and operational resources** to meet its obligations under the licence*”, works as a principle, but exposes a further definition of how “adequate” should be defined, particularly in the context of regulatory allowances being determined and set by the Authority. Furthermore, this term raises the question of what the relevant time period is - presumably the duration of the licence itself, this would again seem challenging given the periodic application of Authority-determined funding through the price controls process.
- The fifth term “*to **minimise the likelihood and mitigate the impact of financial distress** within the corporate group on the licensee*” appears to imply that the regulated company has a role in minimising the likelihood of financial distress in other parts of the corporate group. This would appear to be counter the objective of the ring-fence, which is presumably to prevent mutual intra-group impact. We assume the intention of this term is to mitigate the impact of financial distress within the corporate group on the licensed entity, and in which case this would appear to duplicate the first term.

Accordingly, we do not agree with the definition, and do not agree that a definition is necessarily appropriate or necessary. If a definition is considered necessary, it should only be completed once the review has concluded to ensure that the definition is aligned with the outcomes of the review, and it needs to be carefully tested to avoid unintended consequences.

Q2. What is your view of the proposal to introduce a ring-fence checklist and AoR certificate templates for completion?

SGN would like to understand why a checklist has been proposed in the review consultation, and the gap or shortcoming that the checklist is intended to address. It is our view that a checklist is simply a duplication of the licence and therefore creates a level of additional reporting burden. As soon as this becomes an obligation it will become an auditing burden in its own right.

Furthermore, there is a risk that the licence and the checklist start to deviate over time, particularly if the checklist does not have the same level of rigour as a licence modification requires. The status of the checklist relative to the licence would therefore need to be defined, as a minimum to ensure a clear hierarchy in the event of any conflict.

In addition, as part of our regulatory submissions, the board are often required to provide statements and to approve certificates based on what they consider to be appropriate. It is occasionally necessary for the board to caveat their statements, for example, in the final year of a price control period, where the ability to make the assertions is dependent on receiving a financeable determination later that year. On the checklist, there is no opportunity to include such statements, and rather, it is a binary statement on an issue that may have more nuance. As such the checklist can become overly restrictive on information that GEMA receives and may limit

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the ability to communicate to GEMA an underlying risk about which the board may be concerned, or may create a concern for the board when they are unable to include conditions or limitations as to the approvals or statements they provide

We believe that this directly conflicts with providing companies with sufficient flexibility to implement financial and corporate governance processes that the Board consider suitable for their Company.

Rather than recreating the licence in excel format, we consider it would be more appropriate to give feedback if the current availability of resources statements are incomplete or if Ofgem has concerns regarding their coverage.

Q3. What is your view of financial certificates 1F, 2F and 3F including a reference to a cash flow forecast as one of the factors to be considered by the board of directors?

SGN agree with this, as long as it doesn't become overly prescriptive. As above, the board are ultimately responsible for approving the certificates based on what they consider to be appropriate. But for the avoidance of doubt, we would anticipate cashflow forecasts are a key element in this process.

Q4. What is your view of compliance certificates 1C and 2C requirements being updated to reference all relevant ring-fence conditions?

SGN find this to be reasonable, provided the licence conditions referenced are directly relevant to the purpose of the certificate. Therefore, we are concerned that listing all licence conditions becomes too prescriptive and builds too great a governance burden onto the Board.

Q5. What is your view of certificate in relation to dividends referencing all ring-fence licence conditions?

SGN find this to be reasonable; however, there is a need for a materiality check as per answer to Q4.

Q6. What is your view about a requirement for two signatories of AoR certificates, one executive director and one SID?

Whilst SGN do not object to having two signatories on the Availability of Resources certificates, an executive director and a SID, we are not convinced that it will introduce a material benefit.

We note that when the SIDs were first being considered for introduction during 2011-2012, Ofgem considered whether the SIDs should have a specific role in signing the Availability of Resources declaration. At the time (March 2011 consultation) GEMA decided that it was better for SIDs to be considered as equal members of the Board with the same legal duties, all working together to provide effective governance and compliance. There was a concern that providing SIDs with specific responsibilities could have unintended consequences and undermine the unity of the licensee board and potentially undermine focus on compliance from all licensee directors.

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“We did contemplate proposing a requirement for SIDs to have reserved powers on some regulatory issues, for example in relation to approval of the annual Availability of Resources certificate. Whilst that might reinforce the link between a SID’s duties and the particular interests of the licensee, we believe it could undermine the unity of the NWO board which would be undesirable.”⁶

It is not clear to us why Ofgem now take a different view and whether they have considered the reasons why SIDs were not previously given this specific role, in addition to whether Ofgem has undertaken a thorough assessment to assess the potential unintended consequences of a significant change to SID responsibilities and therefore the share of liability across the board of directors. We need to ensure that all changes remain consistent with the statutory duties.

We also believe it is important that a non-executive director should also be able to sign this certificate (as has been the case until now) in addition to Executive Directors and Independent Director.

Q7. Do you agree the intervention plan should be submitted upon request, on an ad-hoc basis, should distress of the licensee is anticipated?

SGN’s view is that the current process which requires us to internally hold an intervention plan is adequate as it is available at any time if the regulator requests it. We are therefore not certain what is the change between the proposed and the current position.

Q8. Do you agree with a review of the intervention plan by Ofgem being undertaken for a price control period?

We are not clear on what Ofgem means by the statement *“In addition, we recommend a review of the intervention plan for a price control period”* and therefore are not clear on the activities that would be undertaken.

In principle SGN agree that an opportunity to share best practice and learnings from across networks would be beneficial. Whilst networks create intervention plans in testament to the controls that are already in place, they have not been tested, as a result, there may be variability between networks based on individual experience within those networks. An opportunity to share best practice, subject to appropriate confidentiality, would be welcome to minimise the risk of intervention plans being insufficient in the event that they are required.

⁶ <https://www.ofgem.gov.uk/sites/default/files/docs/2011/03/ring-fence-mods-consultation.pdf>, para 4.12

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Q9. Do you have any views on extending the RIIO-3 measures (obtaining two investment grade credit ratings) to the electricity distribution sector in 2026?

We have some concerns over this proposed licence condition irrespective of whether it is applied to electricity distribution or not. Our views have been set out in responses to various RIIO3 and Licence consultations over the past 12-18 months. In summary:

1. We are concerned with the absolute requirement to maintain more than one investment grade issuer credit ratings – Going forward, Gas Networks are much more exposed to negative rating actions as a consequence of policy decisions out-with their control. The absolute requirement puts companies in a position where they cannot control compliance of the licence. Therefore, instead of the wording ‘the licensee must maintain more than one’ (investment grade issuer rating) we would support the wording in the ED licence that ‘the licensee must take all appropriate steps to maintain more than one’.
2. In the recent RIIO-3 Final Determination, Ofgem rejected our recommendation to use Fitch’s unsecured debt rating for the purposes of the regulatory dividend lock-up licence condition.
 - a. Ofgem maintain the credit rating *“measure in the licence is the Issuer Credit Rating (ICR), a rating issued for the entity as a whole and as defined by the current licence conditions, rather than a rating for a specific debt instrument. This is widely known as a Long-Term Issuer Rating for Moody’s, Issuer Credit Rating for S&P, Issuer Rating for DBRS, or an Issuer Default Rating (IDR) for Fitch”*
 - b. *“We consider it important that the rating does not factor in loss recoverability as this does not reflect consumer risk exposure. We understand that Fitch is the only credit rating agency that generally applies a one-notch uplift from the IDR to derive the senior unsecured debt rating for utilities, whereas other agencies align senior unsecured rating with the ICR. Therefore, we will continue to treat Fitch’s IDR as equivalent to Moody’s and S&P ICRs to align with our intent in the licence conditions and ensure consistency across credit rating agencies”*

Ofgem has incorrectly tightened the credit rating thresholds at which lock-up provisions come into effect. The consequences of the lock-up provisions are material for companies and investors and so, as highlighted in SGN’s RIIO-3 draft determinations response⁷, it is important that the rating threshold applied to each rating agency are based on a consistent methodological basis that reflects all relevant information and that the appropriate ratings definitions are referenced.

Ofgem’s intention, in setting thresholds, is presumably to capture the creditworthiness of the entity separate from any particular class of debt. Creditworthiness is based on two components –

- (i) the probability of default and
- (ii) the likely proportion of capital returned to investors in the event of a default.

The Moody’s Corporate Family Rating (CFR) considers both of these elements together and is therefore the correct rating to use, as set out in the licence. However, the equivalent Fitch rating set out in the licence, its Issuer Default Rating (IDR), only considers the first of these two components. The second element, likely proportion of return of capital, is only considered in the Fitch unsecured debt ratings, which tend to be a notch

⁷ France Annex – section F.2

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higher than its IDR rating for regulated utilities. For other rating agencies the unsecured debt ratings are aligned with the issuer credit quality as the proportion of capital return has already been taken into account.

The current licence drafting therefore does not appropriately assess financial resilience for those companies with a Fitch Rating. This is because the rating used does not, as a clear methodological approach, take into consideration all the relevant information and is on an inconsistent basis with the other credit rating agencies threshold applied. The continued use of Fitch IDR instead of Fitch unsecured debt rating is a clear error in assessing the creditworthiness of the entity.

Fitch themselves have stated that the senior unsecured rating (which is one notch above the Issuer Default Rating (IDR) that Ofgem are proposing to use) would be a more appropriate rating to monitor to factor in recovery considerations and to allow a better comparison with the ratings of other agencies (where rating definitions may vary).⁸

Q10. Do you agree the obligation to provide a Financial Resilience Report and associated financial projections should be added to the ED licence condition to align with other sectors?

No specific comments.

Q11. Do you agree the obligation to provide published rating reports should be added to the ED licence condition to align with other RIIO sectors?

No specific comments.

Q12. Do you agree with extending the distribution lock up trigger proposed in RIIO-3 to ED?

No specific comments.

Q13. What is your view about extending the distribution lock up to the 2C certificate?

SGN do not agree that the dividend lock up should be extended to the 2C certificate as we believe the necessary conditions are already in place.

The reason for this position is that (in the GD licences) the availability of resources is an annual statement of available financial resources (with the submission of either 1F, 2F, or 3F), a statement of available operational resources (with a submission of either 1R, 2R or 3R), and the compliance with specific licence conditions (a submission of 1C or 2C).

⁸ Fitch Ratings – ‘What Investors Want to Know: RIIO-3 Sector Specific Methodology Decision’ 14th November 2024

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Prior to making a dividend, the board has to confirm, and a non-executive director has to sign, that the conditions in 1C are in place. As such, we do not see an obvious route through which a board would pay a dividend if it was out of compliance with the 1C certificate.

Furthermore, by linking a distribution lock-up to the 2C certificate specifically, which is an annual submission, it risks introducing a dividend lock-up for the entire year unless the 2C certificate becomes an irregular submission.

Q14. What is your view about amendment proposed to SLC41.3 regarding any alterations to existing capital and reserves?

It is SGN's view that the current licence condition that states that dividends should be made out distributable reserves is appropriate and sufficient.

We do not think that it is necessary to extend this licence condition to secure the consent of the authority, should the licensee consider altering capital and reserves to enable a dividend distribution, and to do so would be an unnecessary level of intervention.

Furthermore, we are unclear of the changes that are being proposed to operationalise this. The provided text appears to be from the ED licence includes the line *"Authority consent will only be granted for such transactions or commitment deemed to be in consumer interest."*

The inclusion of this line could be considered in two ways. Firstly, that it is unnecessary given that it would be apparent from the GEMA vires anyway. Alternatively, and more concerning, is that it is a requirement to demonstrate that such a change is within the consumer interest, which could be inferred as the consumer has benefit from a change. We think that the ringfence is already appropriate and sufficient in this area.

We also note that the example has been given from the ED licence, comparing condition 41 of the ED licence and 39 from the GD licence shows significant differences between the two, and as such it is important to consider the change within the context of the actual licence to which is being referred.

SGN's view is that a more practical approach would be for networks to put in place the structures that they deem to be most appropriate to deliver their licence obligations. If networks want to significantly change their structure, then we think it is appropriate for networks to notify Ofgem of any change in advance and to provide a suitable level of time for questions to be raised should there be specific concerns.

Extending this further could risk rating agencies viewing this as credit negative due to excessive regulatory intervention. A requirement to notify Ofgem in advance should be adequate thus enabling networks to put in place structures they deem appropriate, provided they are confident no licence conditions will be breached.

Q15. Do you agree we should consider appropriateness of response time period in respect of indebtedness licence condition?

We would like to clarify this question.

Within the proposed licence, the following text (in bold) has been included: *"(a) the licensee has remedied the breach to the satisfaction of the counterparty concerned and the Authority has confirmed in writing that the*

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remedy is sufficient to avoid triggering the provisions of Part D;” The equivalent text is provided in gas distribution licence SSC 39 (8), however presumably rather than reference to Part D (that does not exist in the gas Licence), the reference should be paragraph 9.

Irrespective, the inclusion then appears to be at odds with the final statement that is applied to (a) and (b) *“and in either case (a) or (b) the remedy or renegotiation has been notified in Writing to the Authority”*, which leads us to question whether this text has been included in the right place.

Secondly, we are concerned about the requirement for a positive affirmation and would question what form this needs to take (email, letter, published letter) and the additional time this could take. If the intention is that the authority should provide positive affirmation that they are comfortable the restrictions can be lifted prior to their removal, then there definitely needs to be a limited time period in which clarification questions can be asked. At the end of the time period and with no further outstanding questions to be resolved, it may be better for approval to be deemed rather than subject to specific correspondence.

Q16. Do you agree the Independence of the network licence condition should be extended to ET?

No Specific comments.

Q17. Do you agree with the amendment for a reconciliation to be provided to show regulatory obligations are being met for De Minimis Business when audited statutory financial statements are being utilised rather than regulatory accounts?

SGN has always been proactive and aspirational with our De Minimis Business because we believe this ultimately benefits our customers through improved financial efficiency that it provides by utilising assets in alternative forms when they are not otherwise used in network services.

For gas networks, as an example, we have a highly trained and specialist workforce of gas engineers whose workload is highly seasonal - the vast majority of emergency responses and their associated repairs work take place over the winter. It is more efficient, therefore, if networks are able to deploy those resources to de minimis activities during the summer months where they may otherwise be under-utilised. As such we believe that there is a case for extending the 2.5% cap.

It should also be noted commercial counter parties (our De Minimis business partners are no different) prefer mid and long-term commitments from us, it is therefore important to avoid volatility in how the de minimis cap is determined.

The statutory accounts turnover figure can be very volatile, and as such, we do not think that in itself it is an appropriate basis for determining the quantum of de minimis business activities. It would be preferable to continue utilising the regulatory structures and for this to be averaged over a period of time to avoid the volatility of a given year. On this basis we would suggest that base revenue could be a stable alternative.

We would also suggest that de minimis thresholds should be subject to review and that networks should be able to make the case to Ofgem to increase the default minimum thresholds where it can be demonstrated to be within the customer’s interests.

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Q18. Do you agree with the proposed change to extend the notice period when required?

We are surprised that GEMA considers that there are instances where Ofgem require more time than the current two-month window in which to review all relevant information with regards to a disposal of an asset. It would therefore be good to understand the basis what may constitute a “contentious issue”, and we would suggest that some level of guidance as to what is likely to be a contentious issue is provided and how networks will be informed if a transfer is deemed to be contentious, otherwise there is a risk that this could provide a barrier for asset disposals which may have a time critical consideration for the receiving party.

Q19. Do you agree with adding ‘financial asset’ to ED SLC26.2?

No Specific comments

Q20. Do you agree a non-financial asset being sold, transferred or disposed of by a licensee should be valued according to its highest and best use?

Whilst we fully understand GEMA’s concern that assets should not be transferred or disposed at a lower value and therefore to the detriment of consumers, we disagree that the licence should be prescriptive in terms of defining the highest and best use. As such utilising IFRS14 or FRS102 standards for determining fair value adjustments appears to be appropriate guidelines through which to assess the appropriate transfer value.

However, we would note that such asset transfers are not commonly executed, as a result they can rely on expert judgement and a reasonable expectation for the risk attached to the asset at the time of transfer.

Secondly, we would note that there may be instances where the whole system benefits of a transfer to a particular entity may outweigh the financially most beneficial value. This is a particular risk where those benefits are realised by a dispersed group of customers and may be harder to monetise.

In the asset transfer, we need to be very clear that the valuation is at the point of transfer and a reflection of the risks and potential opportunities associated with the transfer at that point in time. It may be the case that, multiple time periods later, a very different value is attributed to an underlying asset as uncertainties have been clarified or risks have been realised or mitigated. The valuation should be at the point of time of transfer and documented on the basis of the evidence available at that time.

Finally, we believe that there should be an incentive to dispose of assets, and these incentives need to be reviewed as part of this consultation. There is a cost of disposal, which is important to be able to net off any income received from the asset disposal, and secondly, it is important that the investors should receive a financial benefit and that not all the value should be passed back to consumers directly.

We would highlight that asset transfer valuation is currently under discussion between Ofgem, DESNZ and industry and, given the substantial cross-over with this consultation, we would recommend that changes to the ring-fence licence in this area are not made until the relevant conclusions from the industry workstream are drawn. To lock in an approach to asset value at this stage risks fettering the considerations of this workstream, and in doing so risks reaching a regulatory conclusion before a wide range of consideration and engagement has been undertaken.

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Q21. Do you agree to completion of a checklist for SID details?

As with our response to Q2, we are not clear on why a checklist is required, what purpose it would serve or how it would sit in relation to the overall body of the licence. As a result, it appears to be a duplicative requirement where the outcomes can be achieved more effectively through other means. Furthermore, it creates the risk of divergence between the licence and the checklist.

As set out in the consultation document this information is currently a requirement under SSC A42 (in the GD licence) and therefore is contained within the notification provision to Ofgem. It is not clear why a checklist would provide greater clarity or more valuable information to GEMA.

Q22. Do you agree it would be in consumer interest for at least one SID to be a signatory on submissions in relation to the ring-fence?

See comments on the role of SID's in our covering letter and Q6. It is our view that the Independent Directors are fully engaged and valued representatives on the board. If there is feedback from the Independent Directors that they consider greater precision is necessary, then we would fully support that, as it is, we are concerned that the greater precision has the impact of limiting and drawing boundaries around involvement rather than promoting flexibility.

We note that the consultation states *"The SIDs have been appointed to the licensee board to provide independent representation in the consumer interest"*. Whilst we agree with the principle, it is important that the SID duties remain consistent with the Companies Act duties on directors. Section 172 of the Companies Act sets out the duties of directors.

"A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,*
- (b) the interests of the company's employees,*
- (c) the need to foster the company's business relationships with suppliers, customers and others,*
- (d) the impact of the company's operations on the community and the environment,*
- (e) the desirability of the company maintaining a reputation for high standards of business conduct,*
and
- (f) the need to act fairly as between members of the company"*

We note that the Chartered Governance Institute says the following in its practical guidance for the duty; *"Directors should not attempt to balance the interests of the company and those of other stakeholders. The six factors and any 'other matters' discussed above are matters to which directors must 'have regard' but, ultimately, directors should comply with the overriding duty to 'promote the success of the company for the benefit of the members as a whole'."*⁹

⁹ <https://www.cgi.org.uk/media/0ufh1oks/directors-general-duties-under-the-companies-act-2006.pdf>

Consultation: Energy Networks Ring Fence Review

Issued by: Ofgem

Territorial extent: Great Britain

Response author: SGN

Deadline for responding: 15th January 2026



While the interests of the consumer are an important constituent for network companies, we need to ensure that the licence remains consistent with the Companies Act duties on directors and needs to avoid placing SIDs in an impossible position. The requirement to consider customers is already included in the list of matters that directors should take into consideration.

Q23. What is your view about the requirement for at least one SID to be in attendance to reach Quorum at licensee board meetings?

See previous comments on the role of SID's in our covering letter and Q6.

Again, we would defer to the view of the Independent Directors to understand if there is a sense of meetings from which they are currently excluded. It is our view that having Independent Directors in the board meeting of the regulated entity is standard practice and that whilst including their attendance in the articles of association may be desirable, however, there is a practicality and administrative burden that should be considered.

Q24. What is your view about the requirement for at least one SID to attend Remuneration Committee (or equivalent) meetings where licensee entity executive remuneration is discussed?

See previous comments on the role of SID's in our covering letter and Q6.

As above, we defer to the Independent Directors in terms of whether this is a specific concern or not. Our immediate concern with this proposal is that there is the introduction of a duty on the Independent Directors to ensure executive remuneration is commensurate with operational performance. This creates the situation where SIDs and other directors are set apart, which may have the unintended consequence of weakening the collective strength of the Board in ensuring good governance and compliance.

It is also a matter of judgment as to whether remuneration is commensurate with operational performance, which makes it difficult for any SID to ensure alignment between performance and remuneration. Therefore, we believe Companies should have discretion to implement corporate governance that they feel appropriately discharges their ring fence duties.

Q25. Do you agree with the proposed definition changes to *ultimate controller*?

We do not have any additional comments on the proposed definition changes and agree with the extension of potential of ultimate controller to entities.