

# Guidance on supplier of last resort and energy supply company administration orders

## Draft guidance

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**Contact:** Giulia Branzi

**Division:** Consumers and Competition

**Tel:** 0207 901 7071

**Email:** Giulia.Branzi@ofgem.gov.uk

### Overview:

We last issued guidance on our approach to our supplier of last resort (**SoLR**) powers in 2008. Since then there have been a number of changes to the industry, including the introduction of the energy supply company special administration (**energy administration**) regime.

A trade sale of a failing supplier remains our preferred means of ensuring continuity of supply. There may, however, be circumstances where a trade sale is not feasible. This document sets out our process for deciding whether and how to exercise our powers to appoint a SoLR or if this is not feasible to seek the Secretary of State's consent to apply to the court for an energy supply company administration order.

The guidance provides information on the approach we intend to follow in taking these decisions, including the criteria for selection of a SoLR where we decide that is the appropriate course of action. The guidance also sets out the information we are likely to seek from industry parties. This will enable them to prepare in advance to respond to a supplier failure situation.

**This guidance has been issued to assist industry parties, their advisors and insolvency practitioners to understand our current powers, policies and procedures. The circumstances of particular supplier insolvencies may however require us to adopt a different approach.**

## Context

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Our principal objective is to protect the interests of existing and future consumers. From time to time, companies in competitive markets including energy markets will fail. Unlike other sectors of the economy gas and electricity supply are services that are generally regarded as essential.

Not every situation of potential supplier failure will require a regulatory intervention, but we have a range of powers at our disposal to enable us to intervene should we consider that appropriate. These include powers to appoint a supplier of last resort or if this not feasible to seek the Secretary of State's consent to seek an energy supply company administration order.

We are publishing this document in order to give stakeholders further clarity about how we propose to exercise these powers.

## Associated documents

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[Supplier of Last Resort: Revised Guidance, 2008.](#)

[The Energy Supply Company Administration Rules, 2013.](#)

[Department for Energy and Climate Change response on Energy Supply Company Administration Rules, 2013.](#)

[The Energy Supply Company Administration Scotland Rules, 2013.](#)

[Department of Energy and Climate Change response on Energy Supply Company Administration Rules Scotland, 2013.](#)

[Ofgem's guidance to FIT guidance for electricity suppliers, 2016.](#)

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## Executive Summary

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From time to time, companies in competitive markets fail. This applies as much in relation to the gas and electricity supply markets as it does to other markets.

The failure of a supplier may impact on a range of groups including its consumers, the wider market and other consumers. We have powers to act in order to address these consequences although not every failure will require regulatory intervention as the business may be sold in a trade sale.

In 2008, Ofgem published guidance on its approach to the appointment of a Supplier of Last Resort which was, at the relevant time, Ofgem's only power to deal with supplier failure. Since then there have been legislative changes which have given Ofgem, with the Secretary of State's consent, powers to seek an energy supply company administration order under powers given to it by the Energy Act 2011 (**EA 11**).

The energy supply company administration regime is intended to deal with situations where use of our SoLR powers would not be practicable. Where the court makes such an order, the energy administrator is under an obligation to run the company in accordance with objectives which differ from those which apply in ordinary administration.

The current regulatory regime gives us discretion in relation to a number of key decisions including when to revoke a licence, and how to select and appoint a SoLR, in addition to whether to seek the Secretary of State's consent to apply for an energy supply company administration order. As a general principle, we consider that trade sales are generally more desirable than regulatory intervention.

This guidance explains the framework for our role in the event of a supplier failure. It provides an overview of the circumstances in which suppliers and their creditors are required to give prior notification of proposals to enter particular insolvency processes. It also considers the manner in which we would expect to approach decisions of whether to seek Government's consent to apply for an energy supply company administration order and whether to appoint a SoLR.

The guidance also explains steps to deal with financial implications for the failed supplier's customers. It states that, alongside other factors, we would take into account (in our SoLR appointment process) any measures offered by a potential SoLR to address the loss of consumer credit balances. Claims under the industry levy will continue to be considered on a case-by-case basis but those made in support of measures to address the loss of balances may fall into the circumstances in which we would approve a claim.

The guidance cannot take account of unforeseen circumstances that might arise during a particular failure. Such circumstances may necessitate changes (which may be substantial and at short notice) to the policies and procedures in this document.

The guidance does not cover the procedures for dealing with failures of other companies within the energy sector such as network companies. It also does not cover the process for ensuring the continuity of payments for generators under the Feed-in-Tariff (FIT) scheme on the insolvency of the FIT licensee.<sup>1</sup> In addition, where the guidance refers to the Secretary of State's powers, this guidance should not be taken to indicate the approach which the Secretary of State would adopt to the use of those powers.

The rest of this document is structured as follows:

- **Chapter 1** explains the legal and regulatory background relevant to the appointment of a SoLR or application for an energy supply company administration order;
- **Chapter 2** explains our approach and the steps we would take when faced with a supplier failure;
- **Chapter 3** gives details of the selection criteria that we are likely to use when selecting a SoLR;
- **Chapter 4** gives details of what happens after a SoLR appointment;
- **Chapter 5** reviews other issues that have been raised about supplier failures; and
- the **Appendices** give details of the information that we are likely to request from various industry parties in the event of us possibly needing to appoint a SoLR or to assist us in deciding whether to seek the Secretary of State's consent to apply to the court for an energy supply company administration order.

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<sup>1</sup> For guidance on this process please refer to our Feed-in Tariff: Guidance for Licensed Electricity Suppliers (v.8.1) which can be found at [https://www.ofgem.gov.uk/system/files/docs/2016/05/fits\\_guidance\\_for\\_licensed\\_electricity\\_suppliers\\_v8.1\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/05/fits_guidance_for_licensed_electricity_suppliers_v8.1_0.pdf).

# 1. Background

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1.1. Our principal objective is to protect the interests of existing and future consumers. In the event of a supplier failure, our priority is to ensure that all customers continue to receive supplies of gas and electricity.

1.2. This chapter explains the legal and regulatory framework for supplier failure scenarios. In particular, it explains our approach to licence applications and the circumstances in which we may appoint a SoLR after revocation of a licence. It also explains the operation of the energy administration regime for supply companies, including the process we would expect to adopt in deciding whether to seek the Secretary of State's consent to apply to the court for an energy supply company administration order.

1.3. Our overview of the framework is set out below and is structured as follows:

1.3.1. granting licences;

1.3.2. notification requirements;

1.3.3. revoking licences;

1.3.4. appointing a SoLR;

1.3.5. energy supply company administration orders; and

1.3.6. our approach to decisions on these powers.

## **Granting licences**

1.4. We assess applications for licences for a number of activities, including the supply of gas and electricity. We assess such applications in accordance with the applicable legislation and our guidance. Current information on these may be found on our website.<sup>2</sup>

1.5. We do not consider that there are checks we could perform at the time of licence application which provide continuing comfort about the supplier's financial viability once it begins operation. The holding of a licence granted by us should not be considered as creating any expectation or giving any guarantee of the financial health of that supplier.

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<sup>2</sup> See <https://www.ofgem.gov.uk/licences-industry-codes-and-standards>.

## Notification requirements

1.6. There are restrictions on the rights of suppliers and their creditors to enter into insolvency processes. Those processes are detailed in the Energy Act 2004<sup>3</sup> (as it applies by virtue of the Energy Act 2011) and include restrictions on:

- 1.6.1. winding up orders;
- 1.6.2. voluntary winding up;
- 1.6.3. ordinary administration orders;
- 1.6.4. administrator appointments by creditors; and
- 1.6.5. enforcement of security.

1.7. In order to enter into one of these processes, the supplier or creditor must first serve notice on both the Secretary of State and Ofgem. A minimum of 14 days' notice is required.

1.8. During this period we will decide whether to apply, subject to the consent of the Secretary of State, to the court for an energy supply company administration order. The Secretary of State also has the power to make such an application.

1.9. The approach we would generally expect to follow in deciding whether to seek the Secretary of State's consent to make such an application is set out below beginning at paragraph 1.25. A key part of our assessment at this stage is therefore whether our SoLR powers would be feasible.

## Revoking licences

1.10. We have the power to revoke a supplier's licence with 24 hours' notice in certain circumstances.<sup>4</sup> For the purposes of this guidance document, the relevant terms are detailed in the terms of the licence<sup>5</sup> and include when the supplier:

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<sup>3</sup> See sections 160-164.

<sup>4</sup> For the avoidance of doubt we have powers to revoke a supplier's licence in other circumstances as set out in the terms of the licence.

<sup>5</sup> The current standard terms may be found here:

[https://www.ofgem.gov.uk/sites/default/files/docs/2012/01/electricity\\_supply\\_licence\\_revocation\\_conditions\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2012/01/electricity_supply_licence_revocation_conditions_0.pdf)

[https://www.ofgem.gov.uk/sites/default/files/docs/2012/01/gas\\_supplier\\_licence\\_revocation\\_conditions\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2012/01/gas_supplier_licence_revocation_conditions_0.pdf)

- 1.10.1. is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986<sup>6</sup>) or any voluntary arrangement is proposed in relation to it under section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
- 1.10.2. has a receiver appointed over the whole or any material part of its assets or undertaking;
- 1.10.3. has an administration order made in relation to it;
- 1.10.4. passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; and/ or
- 1.10.5. becomes subject to an order by the High Court for winding-up.

1.11. We will generally contact the relevant person at the supplier, whether that is a director or an Insolvency Practitioner<sup>7</sup>. We expect any requests by us for a meeting to be given priority.

1.12. We will raise and clarify any concerns during this discussion. We can also explain the regulatory position and our powers where appropriate. We will give the supplier the opportunity to provide its views on the appropriate course of action.

1.13. We will make clear the timescale for making such representations. This will depend on the urgency of the situation. In particular, we will consider the impact on customers and other industry parties of delaying any decision to allow time for further representations or for alternative solutions to the licensee's problems to be found.

1.14. We must publish reasons for revoking a licence. Once we have decided to revoke, we will issue a Notice of revocation and, simultaneously, a Notice giving reasons. Any confidential material is likely to be contained in a separate annex sent only to the licensee.

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<sup>6</sup> The terms state that section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time determine by notice in writing to the licensee. The licensee shall not be deemed to be unable to pay its debts if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any revocation notice.

<sup>7</sup> We use this to refer to any insolvency officer holder in this guidance.



## Appointing a SoLR

1.15. We can direct any gas or electricity supply licensee<sup>8</sup> to take over responsibility for a failed supplier's customers (i.e. to be a SoLR) after revocation of the failed supplier's licence.<sup>9</sup> In considering which supplier to direct, we must be satisfied that the SoLR could supply the additional customers without significantly prejudicing its ability to continue to supply its existing customers and to fulfil its contractual obligations for the supply of gas or electricity. Further details of the selection process we would follow can be found in Chapter 3.

## Energy supply company administration orders

1.16. This section provides an overview of aspects of energy supply company administration with particular emphasis on those where we may have a significant role. It does not provide a comprehensive overview of the operation of the regime as a whole; stakeholders should consider the relevant sections of the Energy Act 2004 (as it applies by virtue of the Energy Act 2011) in addition to the Energy Supply Company Administration Rules 2013 or the Energy Supply Company Administration (Scotland) Rules 2013 (the **Rules**) for this purpose.

1.17. We can only make an application for an energy supply company administration order with the consent of the Secretary of State. The Secretary of State also has the power to make such an application.

1.18. The application is made to the court in accordance with the relevant Rules. Those Rules set out detailed information about the process of appointing an energy administrator as well as the process for the administration following the energy administrator's appointment.

1.19. The Rules require that a witness statement is made by the person making the application. We would ordinarily expect the supplier to cooperate with us by providing relevant information for this purpose. Alternatively we may use our powers to require information to be provided.


1.20. The application must identify the persons proposed to be the energy administrator. Where Ofgem is making the application for an energy supply administration order, we will consider on a case by case basis whether to propose an insolvency practitioner chosen by us or to seek the appointment of the administrator proposed by the company or its creditors where relevant. Relevant factors include:

- 1.20.1. the knowledge and experience of the proposed administrators in relation to the energy sector and the company specifically;

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<sup>8</sup> With the relevant licence (ie we would not appoint a supplier with a licence to supply non-domestic customers only to act as a SoLR for domestic customers).

<sup>9</sup> Gas and electricity supply licences: Standard Condition 8.1



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1.20.2. the expertise and level of resource available within the administrators' firm, including of special administration regimes; and

1.20.3. the existence of any actual or perceived conflicts of interest relating to the proposed administrators and their firm.

1.21. The court may only make the energy administration order in particular circumstances. Those circumstances are where either 1) it is satisfied that the energy supply company is, or is likely to be, unable to pay its debts or 2) it is satisfied that grounds exist that would entitle the Secretary of State to apply to wind up the company on public interest grounds.

1.22. The energy administrator, once appointed, is an officer of the court and exercises and performs duties on behalf of the energy supply company as the company's agent. The energy administrator will manage the company for the purposes of achieving the objective of energy supply company administration. The objective is to continue to contract to supply gas and electricity to customers at lowest practicable cost until the company is either rescued as a going concern, or if this is not possible transferred to another company as a going concern, or if this is not possible, transferred to two or more companies.

1.23. The Secretary of State may, subject to HM Treasury consent, decide to provide financial support to a company in energy supply company administration.

1.24. The energy administrator must continue to supply customers until the company is either rescued, sold or its customers transferred to other suppliers.

### **Our approach to decisions on these powers**

#### Overview

1.25. We will need to decide quickly whether to seek the Secretary of State's consent to apply to the court for an energy supply company administration order.

1.26. We will only seek the Secretary of State's consent where we consider that use of our SoLR powers would not be feasible. Where we decide not to seek an energy supply company administration order we will not necessarily use our SoLR powers. We have discretion on whether to revoke a licence, and how to select and appoint a SoLR and as a general rule consider that trade sales are more desirable than regulatory intervention.

Issues to consider

1.27. We need to assess whether use of our SoLR powers would be feasible. We can only appoint a SoLR where we consider that to do so would not significantly prejudice the SoLR's ability to continue to supply their existing customers. Significant doubts about the possibility of a viable SoLR or likely practical problems with their appointment at short notice will make it more likely that we would decide to seek the Secretary of State's consent to apply for an energy supply company administration order.

1.28. We therefore need to understand the nature of the failing supplier's portfolio of customers, including its size, as well as the capability of potential SoLRs to take on the failed supplier's customers. We will do this by asking the failing supplier about its portfolio of customers as well as asking other suppliers a series of detailed questions about how they would deal with various aspects of being a SoLR. Section 2 provides further information on this.

1.29. We will also seek to understand, through discussions with the failing supplier and its advisers, the extent to which funding is likely to be necessary. Energy supply company administration provides specific powers for the Secretary of State, with the consent of HM Treasury, to provide financial assistance to the company in energy supply company administration.

1.30. As a general rule we will not seek to determine that a supplier is "unable to pay its debts", nor decide other matters that should be decided by a court. In these circumstances, we would generally wait until a court has made a decision before deciding whether to revoke a licence. This does not affect our ability to present evidence to the court in support of an application for an energy supply company administration order.

1.31. We will also consider the Insolvency Practitioner's proposals regarding the payment of certain charges.

1.32. For example, we do not consider that it is acceptable for an Insolvency Practitioner to continue to supply without agreeing to pay the appropriate energy balancing and network charges. If an Insolvency Practitioner agrees to pay such charges it is likely that we would consider that they should be allowed to continue supplying customers for a limited period in order to give them some time to sell the company's assets in a trade sale. If they did not agree we would consider carefully the risks to other industry parties of exposure to the increasing bad debt of the failing supplier.

## 2. Approach to supplier failure

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This Chapter sets out the steps we would take in order to gather the information we need to decide the appropriate course of action. The arrangements steps we would take to determine whether it is feasible to appoint a SoLR or whether to seek the consent of the Secretary of State to apply for an energy supply administration order are described below.

### **Collect information about the failing supplier's portfolio**

2.1. Good quality information about a failing supplier's portfolio enables potential SoLRs to assess the impact on their existing business of supplying additional customers. It also enables a SoLR to provide a better service to those customers.

2.2. Some information about customers can be obtained from the network operators, however, they do not have customer billing details. This information will be held by the failing supplier.

2.3. Ofgem will consider carefully when it is appropriate to serve information requests on the failing supplier and network operators.

## Gas

2.4. An overview of the information that would expect to request from gas transporters is set out in Appendix 2. We will also seek information from XoServe.

## Electricity

2.5. Electricity Distribution Network Operators (DNOs) will be asked for information. An overview of the type of information that would be requested from DNOs is set out in Appendix 3. We will also seek information from Elexon.

## Data Communications Company

2.6. We will ask the DCC for information where the failed supplier has meters enrolled in their system. In relation the supplier's user identity we will request details of the number of meters enrolled and the relevant MPANS and MPRNS, including details of the number of meters operating in prepayment mode.<sup>10</sup>

## Sharing information with potential SoLRs

2.7. Some high-level, aggregated portfolio information will be provided to potential SoLRs to enable them to assess their ability to supply the additional customers. Specific customer details (where these are available) will only be released by Ofgem to a SoLR when it has been appointed. The information provided to potential SoLRs may not be further disclosed.<sup>11</sup> The information provided must only be used for the purposes of making a decision about whether to volunteer for the role of SoLR and for providing the information requested by us.

2.8. Where possible, we will endeavour to give potential SoLRs early warning that a SoLR situation may be imminent. Such warning may include the total number of domestic and non-domestic gas and/or electricity supply points and the likely energy volume commitments required. In order to assist this process we ask that suppliers regularly update with details of the appropriate persons for us to contact in potential SoLR situations. These should include appropriate details to enable us to contact the supplier outside of normal business hours.

## **Collect information from the failing supplier**

2.9. Although network operators and Elexon have information about a supplier's meters, volumes used and site addresses, they do not hold customer billing details.

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<sup>10</sup> We are working with Government on developing the processes for supporting SoLR under the enduring change of supply arrangements for smart metering.

<sup>11</sup> Such information will be subject to section 105 of the Utilities Act 2000. Disclosure of information other than in accordance with that section is an offence.

Ofgem will therefore ask the failing supplier for information about its portfolio and for details of its customers.

2.10. A high level overview of the information that would be requested from the failing supplier is set out in Appendix 1.

2.11. We will also generally seek an urgent discussion with any actual or prospective Insolvency Practitioner to discuss their intentions and explain our role and powers. We would seek the Insolvency Practitioner's agreement to pay those post-administration costs that could otherwise be incurred by other industry parties or customers. If the Insolvency Practitioner agrees, it is likely that we would consider that some time should be given to finalise a trade sale. If there is no agreement to pay these costs, other industry parties are exposed to the failed supplier's bad debt once any credit cover has been utilised.

### **Collect information from potential SoLRs**

2.12. We would always prefer to be able to appoint a SoLR that had consented to the role. However, if no suitable supplier wants to be a SoLR, we will consider using our powers to direct a supplier without its consent. We will therefore send high-level, aggregated information about the failed supplier's portfolio to potential SoLRs.

2.13. We would ask suppliers to update us on a regular basis on their willingness to be considered as a potential SoLR. As a general rule we would endeavour to contact all of those who have indicated a willingness to be considered as a SoLR; however in some situations we may contact a more limited group of suppliers given, for example, the need to take action quickly or where we consider that some of the suppliers would be unable to fulfil the role of SoLR, whether voluntarily or otherwise in the particular circumstances.

2.14. Ofgem will use its powers to require potential SoLRs to provide information about a number of issues which could affect their ability to supply the failed supplier's customers. This section summarises the information which is set out in Appendix 4.

2.15. As explained above, we may also need to seek information from potential SoLRs to assist us in deciding whether to seek the Secretary of State's consent to apply for an energy supply company administration order. In such circumstances, we may not require all of the information explained below.

### Ability to provide gas and electricity

2.16. In appointing a SoLR, we have to consider whether the supplier could carry out the role without significantly prejudicing its ability to supply its own customers and fulfil its contractual obligations for the supply of gas and electricity. We will therefore ask potential SoLRs to say how they will continue to provide gas and/or

electricity to their existing customers while also supplying the failed supplier's customers.

### Industry processes

2.17. We want to keep disruption to the failed supplier's customers to a minimum. We therefore need information to allow us to judge how the SoLR will operate various industry processes and agreements. Potential SoLRs will be asked how they will manage the change of supplier process.

2.18. In addition, potential SoLRs will be asked for information about how they (or their gas shipper, where applicable) will maintain adequate current and increased credit cover under existing industry agreements.

### Customers

2.19. The provision of information to the failed supplier's customers will be a very important part of the SoLR's role. Potential SoLRs will be asked how they will:

- 2.19.1. tell customers about what has happened;
- 2.19.2. inform customers of the charges they will face; and
- 2.19.3. ensure that arrangements are in place to enable customers to move onto a contract with the SoLR or to move from the SoLR to a contract with the supplier of their choice.

### Deemed contracts and customer balances

2.20. We will seek information on a SoLR's proposed deemed contract rate.<sup>12</sup> A SoLR's deemed contract prices can reflect no more than the reasonable costs of supply (including costs attributable to the purchase of gas or electricity at short notice), together with a reasonable profit.

2.21. Once appointed, a SoLR will be able to charge the failed supplier's customers on the basis of its deemed contract rate. This will cover the period from appointment until customers have agreed a replacement contract rate with the SoLR or another supplier of their choice, or the six month period of SoLR appointment expires, whichever is earlier. We will consider the SoLR deemed contract prices in terms of what is best overall for the customer groups involved.

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<sup>12</sup> Suppliers will need to take into account the applicable customer objective and standards of conduct in setting this rate.

2.22. We consider that it is important that the failed supplier's customers can switch to an alternative supplier if they wish to. A SoLR must not charge a termination fee if a customer takes supply from another supplier.

2.23. We will also seek information on the proposed steps to be taken in relation to customers or groups of customer who may have held significant credit balances with the failed supplier. The loss of such balances may have particular implications for customers or specific groups of customers in certain circumstances. For example vulnerable customers may suffer from a supplier failure during winter months. In such circumstances it may be appropriate for potential SoLRs to address the loss of this balance (e.g. through applying a credit to the customer's account) in order to ensure that customers are not unduly affected.

#### Claims for last resort supply payments

2.24. The role of SoLR represents a significant logistical challenge to a supplier. The supplier is likely to incur increased administrative costs and will have to implement additional energy purchasing arrangements. These will have to be activated and managed within a very short period of time. However, there are also potentially valuable commercial benefits to a SoLR. It will not have the normal acquisition costs (for example, paying commission to price comparison websites) and will have the opportunity to convert the customers it has acquired as a SoLR to normal contracts.

2.25. Electricity and gas suppliers' licences permit them (in some circumstances) to make a claim for the otherwise unrecoverable costs that they have incurred in being a SoLR. This would be paid by a "levy" on gas transporters" and electricity distributors' Distribution Use of System (DUoS) charges.

2.26. We would generally prefer a SoLR not to make a claim via these arrangements for costs it has incurred carrying out its role although we recognise that circumstances may exist which would justify a departure from this general rule. The circumstances of every supplier failure are different and there may be some where a SoLR incurs costs which would not otherwise be recoverable. An efficient SoLR should be able to minimise its exposure to these costs.

2.27. Following appointment of a SoLR that had not waived its right to make a claim, we will decide on a case-by-case basis whether it might be appropriate for a SoLR to make a claim on the levy - and whether the amount of any claim was reasonable. For example, we may in certain circumstances consider it appropriate to approve the claim where it relates to costs associated with the protection of customers who held a credit balance with the failed supplier as outlined above.

#### **Set out a clear timescale**

2.28. We will endeavour to give suppliers advanced warning that a SoLR event is imminent. There is a considerable amount of information that suppliers can prepare



in advance of an actual failure which would ensure that, when the SoLR selection process starts, more time can be spent on key decisions.

2.29. We are likely to allow potential SoLRs between **four to six hours** to provide all the information requested. However, this will depend on the specifics of each case and, in considering what response time is appropriate, we will take into consideration the size of the failing supplier and the nature of the failure as well as the need to protect customers and minimise the impact of the failure on other industry parties.

2.30. The provision of information by potential SoLRs is a regulatory obligation. We expect potential SoLRs to take seriously their obligations to respond adequately and in a timely manner. A potential SoLR that fails to provide the information required may still be considered as a SoLR. We will also consider whether we should take enforcement action if a licensee fails to respond properly to the information request within the set timeframe.<sup>13</sup>

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<sup>13</sup> Decisions whether to take enforcement action are taken in accordance with the published policy contained in our Enforcement Guidelines.

## 3. SoLR selection criteria

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3.1. This Chapter sets out the selection criteria that Ofgem is likely to use in assessing which supplier(s) to direct to be a SoLR. The criteria should be read in conjunction with the information request in Appendix 4. The criteria may vary depending on the circumstances of the failure – this is therefore provided for guidance only.

### **General information**

#### Volunteer SoLR

3.2. *Ofgem policy:* Other things being equal, preference will be given to those suppliers who volunteer for the role of SoLR.

3.3. *Reason:* We consider that customers' interests will be best served by a supplier that wants to be a SoLR, provided we are satisfied that the volunteer has the capacity and resources to fulfil the role.

3.4. *Criteria:* The answer "Yes" to being a volunteer SoLR, whatever customer group.

#### Last resort supply payments

3.5. *Ofgem policy:* Preference will normally be given to those suppliers who state that they will not make a claim for last resort supply payments although we may depart from this depending on the specifics of the supplier insolvency.

3.6. *Reason:* Ofgem would prefer a SoLR not to make a claim via the levy arrangements for costs it has incurred carrying out its role. We would expect an efficient SoLR to be able to cover its own costs and not rely on additional payment through the levy arrangements. There may be circumstances in which this is not possible such as where there are costs associated with the protection of customers who held a credit balance with the failed supplier as outlined in paragraph 2.23.

3.7. *Criteria:* The answer "Yes" to agreeing to waive the right to make a claim for a last resort supply payment before being appointed a SoLR.

## **Industry arrangements**

### Sourcing gas and electricity; network agreements

3.8. *Ofgem policy:* A SoLR should have robust arrangements in place that will enable it to supply the failed supplier's customers economically and efficiently. A SoLR should have arrangements in place to source the additional gas and electricity required for any customers acquired as part of a last resort supply direction, while enabling it to continue to supply its existing customers.

3.9. *Reason:* We will not issue a last resort supply direction to a supplier that we consider may not be able to supply the acquired customers in addition to its existing customers. We will not issue a last resort supply direction to a supplier if, as a result of the direction, the supplier (or its shipper) would be in breach of its licence conditions or industry codes and agreements.

3.10. *Criteria:* All suppliers should demonstrate that they can supply additional customers without jeopardising supply to existing customers. Gas suppliers must have an existing agreement with a licensed shipper.

### Credit cover

3.11. *Ofgem policy:* A SoLR or its shipper must be able to comply with current credit cover rules.

3.12. *Reason:* The transfer of customers to a SoLR is likely to be delayed if the SoLR or its shipper is in breach of credit cover rules. Other market participants and other customers may be exposed to smeared costs in the event of default where there is inadequate cover.

3.13. *Criteria:* A supplier must provide evidence of compliance with current credit cover rules and the ability to provide the increased cover required without reaching its credit limits.

## **Customers**

### Change of supplier process

3.14. *Ofgem policy:* A SoLR must be able to operate the relevant change of supplier processes and bring the customers onto the SoLR's own systems promptly in order to minimise disruption to customers and other industry participants.

3.15. *Reason:* To minimise disruption to customers of the failed supplier (e.g. enable them to be billed) and other industry participants.

3.16. *Criteria:* We will assess the issues that the supplier would face in processing the failed supplier's customers. In particular, we will assess the supplier's ability to assimilate customer information and issue bills without undue delay.

#### Customer service

3.17. *Ofgem policy:* A SoLR must have adequate arrangements in place to deal with customer queries.

3.18. *Reason:* we expect a SoLR to deal with the bulk of customer enquiries notwithstanding the fact that other bodies (including Ofgem) may provide some information to customers.

3.19. *Criteria:* We will assess the supplier's ability to deal with customer enquiries, taking into account draft letters, notices, Q&As prepared, call centre capability and billing arrangements.

#### Prepayment meter customers

3.20. *Ofgem policy:* A SoLR should recognise that there are particular difficulties associated with a last resort direction to supply PPM customers, and should have robust arrangements in place to enable it to deal with the challenges, minimising disruption to affected customers.

3.21. *Reason:* PPM customers of a failed supplier may face additional problems as a result of their supplier's failure. In particular, the customers may not be able to obtain emergency credit or replacement PPM devices quickly. The SoLR should recognise the additional issues associated with these customers and should have arrangements in place to deal with them.

3.22. *Criteria:* We will assess the supplier's ability to deal with PPM customers acquired as part of a last resort supply direction.

### **Deemed contracts and customer balances**

3.23. *Ofgem policy:* A failed supplier's customers should not generally expect to be protected from paying increased prices. However, deemed contracts can reflect no more than the reasonable costs of supply (including costs attributable to the purchase of gas or electricity at short notice), together with a reasonable profit.<sup>14</sup> In certain circumstances it may be appropriate for potential SoLRs to address the loss of this balance (e.g. through applying a credit to the customer's account) in order to ensure that customers are not unduly affected.

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<sup>14</sup> Taking into account the applicable customer objective and standards of conduct.

3.24. *Reason:* In the case of a failed supplier, our primary interest in customer protection means ensuring continuity of supply but it may be appropriate in the overall interests of consumers for some steps to be taken to address the implications for particular customer groups associated with loss of a credit balance.

3.25. *Criteria:* We will consider the potential SoLR's prices, taking into account the explanation given by the supplier for the difference, if any, between its deemed contract prices in normal circumstances and its deemed contract prices under a last resort supply direction. We will also assess the supplier's proposals in respect of consumers who have credit balances.

### **Assessment of information**

3.26. Key decisions in the process will be taken by a senior member or members of our staff. We will set up a panel of staff to assist that person by assessing the information provided against these criteria. We may need to contact suppliers to clarify individual responses and, if necessary, discuss certain aspects of the responses, particularly the interaction of deemed contract prices and the potential for any claim for a last resort supply payment.

3.27. We would always prefer to be able to appoint a SoLR that had consented to the role. However, if no suitable supplier volunteers to be a SoLR, we will consider using our powers to direct a supplier without its consent where we are satisfied that they are able to perform this role.

3.28. We have the power to appoint any supplier as a SoLR so long as we think they could carry out the role without significantly prejudicing their ability to supply their own customers and to fulfil their contractual obligations for the supply of gas and electricity.<sup>15</sup> We will consider as potential SoLRs all suppliers that we think meet these criteria, irrespective of whether they have responded to our information request. We will select a SoLR from those suppliers we consider to be best placed to carry out the role.

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<sup>15</sup> With the relevant licence (ie we would not appoint a supplier with a licence to supply non-domestic customers only to act as a SoLR for domestic customers).

## 4. What happens after a SoLR appointment

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4.1. This Chapter covers a number of issues regarding what happens after the appointment of a SoLR.

### **Revocation date, appointment date and duration of direction**

4.2. The licence revocation and the effective date of appointment of the SoLR will always coincide.

4.3. The direction to be a SoLR cannot last longer than six months. After that time the SoLR remains the supplier for any customers with which it has deemed or other contracts. However, after the direction ceases to have effect the SoLR's deemed contract price must revert to its normal rate.

### **Transfer to a SoLR**

4.4. It is for the SoLR (and its shipper), in conjunction with other industry parties (e.g. network operators), to decide the best way to transfer customers to its portfolio. Nevertheless, the SoLR has a deemed contract with each of the failed suppliers customers and is therefore able to charge them for the gas or electricity they use prior to actual transfer to the SoLR. When determining the amount of gas or electricity a customer has used, a SoLR must act on a reasonable basis, taking into account available consumption data for the premises in question and other relevant factors.


### **Obligations on a SoLR**

#### Data protection principles

4.5. If appointed as SoLR to some or all of the failed supplier's customers, suppliers will receive from Ofgem any information that it has available on those individual customers. The SoLR must, in these circumstances, comply with applicable law and regulation on data protection. As a general rule, the data disclosed by Ofgem must only be used for the purpose of providing information to Ofgem or for the purpose of supplying gas and/or electricity pursuant to a last resort supply direction.

#### Notice to customers

4.6. Within a reasonable period of time after appointment, the SoLR must send a notice to customers for which the SoLR has become the supplier telling them:



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- 4.6.1. the failed supplier is no longer supplying them;
- 4.6.2. the SoLR is their supplier from the date of appointment;
- 4.6.3. they are supplied under a deemed contract;
- 4.6.4. they may switch to another supplier if they wish to;
- 4.6.5. the charges payable and how those charges are determined; and
- 4.6.6. any other relevant information.

### Meter readings

4.7. The SoLR should take reasonable steps to ensure that actual or estimated meter readings are secured to enable acceptable and timely billing of customers.

### Sourcing gas and electricity

4.8. In purchasing any additional gas or electricity in order to supply its newly acquired customers, the SoLR should take all reasonable steps to do so as economically as possible under the circumstances.

## 5. Other issues

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5.1. This Chapter clarifies other issues about supplier failures, including the implications for gas shippers.

### **Gas shippers**

#### Suppliers' undertakings to gas transporters

5.2. There is no statutory or licence provision for Ofgem to appoint a "Shipper of Last Resort" if a gas shipper fails (whether or not its supplier remains solvent).

#### Obligations on shippers

5.3. When a SoLR is appointed, any gas shipper that shipped gas to a failed supplier's customers must comply with any relevant directions given by Ofgem to facilitate the SoLR supplying gas or to make arrangements with the SoLR's shipper to convey gas to premises.

### **Feed-in-Tariff**

5.4. There is a further, separate, process where the failure of an electricity supplier is also a FIT Licensee. This separate process is known as the Continuity of FIT Payments Direction (CoFPD) and is designed to ensure that FIT payments for accredited FIT installations continue after the failure of the FIT Licensee. This process may run alongside the processes set out in this document.

5.5. Further guidance on the Continuity of FIT Payments Direction (CoFPD) can be found in the guidance published on our website.<sup>16</sup>

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[https://www.ofgem.gov.uk/system/files/docs/2016/05/fits\\_guidance\\_for\\_licensed\\_electricity\\_suppliers\\_v8.1\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/05/fits_guidance_for_licensed_electricity_suppliers_v8.1_0.pdf)



## Appendices

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In each case the information requested may vary depending on the circumstances of the failure – these are provided for guidance only.

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## Appendix 1 – Information from failing supplier

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This Appendix provides a high level overview of information that Ofgem is likely to request from a failing supplier:

1. a group structure information including the current ownership of the Licensee and related companies and details of company directors, other key personnel and employees;
2. a copy of the standard contract (or, if more than one standard contract, the various forms of standard contract) entered into by the Licensee with customers;
3. a description of the financial position of the company, including relevant accounts, forecasts and details of indebtedness and related security arrangements;
4. portfolio information, split by gas and electricity and domestic and non-domestic customers;
5. details of the supplier's Priority Services Register;
6. details of arrangements for sourcing gas and electricity, credit cover and hedging positions; and
7. details of the supplier's regulatory obligations, including its positions under environmental and social schemes.

## Appendix 2 – Information from gas transporters

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This Appendix provides an overview of the information that Ofgem is likely to request from gas transporters in relation to the failing supplier:

1. identities of the failing supplier's shippers;
2. the total number of supply points;
3. the spread of sites geographically and details of domestic and non-domestic supply points;
4. details of the sites in the process of registration and details of sites in the process of transferring away; and
5. portfolio supply point information by Meter Point Reference Number.

## Appendix 3 – Information from electricity network operators

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This Appendix provides an overview of the information that Ofgem is likely to request from electricity Distribution Network Operators (DNOs), in relation to the failing supplier:

1. portfolio information including the total number of MPANs in the portfolio split by Profile Class, Measurement Class and Grid Supply Point Group; and
2. details of each MPAN.

## Appendix 4 – Information from potential SoLR

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This Appendix provides an overview of the information that Ofgem is likely to request from potential SoLRs. The information requested may vary depending on the circumstances of the failure – this is therefore provided for guidance only.

### **GENERAL**

#### *Data protection*

1. confirmation that the supplier will not use information disclosed to it for any purposes other than assessing whether to volunteer for the role of SoLR; and
2. confirmation that the supplier will comply with relevant law and regulation on data protection.

#### *General information*

3. confirmation of the customer groups in relation to whom the supplier wishes to volunteer to be a SoLR (ie gas/electricity and domestic/non-domestic); and
4. confirmation of whether the supplier wishes to waive its right to make a claim for a Last Resort Supply Payment before being appointed a SoLR.

### **Customers**

#### *Change of supplier process*

5. details of the arrangements the supplier will make to manage the change of supplier process and the length of time it is likely to take to transfer all the customers of the failed supplier.

#### *Customer service*

6. an explanation of the arrangements that the supplier will make to deal with the customers of the failed supplier, including: i) how customers will be informed about what has happened; ii) how customers’ written and telephone enquiries will be dealt with; iii) how it will be ensured that customers will receive a timely and accurate bill; and iv) how customers will be made aware of their options to sign up to a contract with the licensee or another supplier.

#### *Prepayment meter customers*

7. an explanation of the arrangements that the supplier will make to deal with the PPM customers.

### **GAS**

#### **Industry arrangements**

#### *Sourcing gas*

8. details of the arrangements the supplier has to source gas for both its existing customers and those of the failed supplier; and

9. details of the supplier's shipping arrangements.

*Network agreements and credit cover*

10. details of any contraventions of any agreements during the past 12 months, including whether there have been any failures to pay invoices;
11. details of the shipper's current arrangements for complying with credit cover arrangements and any failures to pay within the past 12 months; and
12. an explanation of how the shipper would comply with the credit cover requirements if it had to ship gas to customers of the failed supplier.

**Deemed contracts**

13. confirmation of the average GB deemed contract price for each customer group (e.g. Standard credit, PPM) if directed to supply gas as a SoLR for a domestic gas customer with medium consumption;
14. an explanation for any differences in this price as compared to the supplier's normal deemed contract price;
15. details of measures to be taken to address the loss of credit balances by customers of the failed supplier;
16. confirmation of the average GB deemed contract price if directed to supply gas pursuant as a SoLR for a non-domestic gas customer; and
17. an explanation for any differences in this price as compared to the supplier's normal deemed contract price.

**ELECTRICITY**

**Industry arrangements**

*Sourcing electricity*

18. details of the arrangements the supplier has to source electricity for both its existing customers and those of the failed supplier.

*Network agreements and credit cover*

19. confirmation of the Distribution Companies with whom the supplier has entered into Distribution Use of System Agreements;
20. details of the supplier's current arrangements for complying with credit cover arrangements and any failures to pay within the past 12 months; and
21. an explanation of how the supplier would comply with the credit cover requirements if it had to supply customers of the failed supplier.

**Deemed contracts**

22. confirmation of the average GB deemed contract price for each customer group (e.g. Standard credit, PPM) if directed to supply electricity as a SoLR for a domestic gas customer with medium consumption;
23. an explanation for any differences in this price as compared to the supplier's normal deemed contract price;
24. details of measures to be taken to address the loss of credit balances by customers of the failed supplier;
25. confirmation of the average GB deemed contract price if directed to supply gas pursuant as a SoLR for a non-domestic electricity customer; and



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26. an explanation for any differences in this price as compared to the supplier's normal deemed contract price.