

Consultation

Supplier Licensing Review: Ongoing requirements and exit arrangements

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In June 2018, we announced our intention to review energy supplier licensing arrangements to ensure appropriate protections are in place against financial instability and poor customer service. The review covers conditions for entering the market, ongoing requirements and exit arrangements. We consulted on changes to the new entry requirements in the initial phase of the review. These new requirements came into effect in July 2019.

We are now focusing on ongoing requirements for active suppliers, and exit arrangements. In May this year, we set out a long-list of policy options to strengthen these areas. We have taken on board initial stakeholder feedback on the potential benefits and drawbacks of each of these options. We are now consulting on a package of proposals we consider will best help to protect consumers by raising standards around financial resilience and customer service.

We set out our proposed package of reforms in this consultation, alongside which we have published a draft impact assessment of the options considered. We request stakeholder feedback on our proposals by 03 December 2019.

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Executive summary

We are reviewing our approach to licensing and regulating suppliers to raise standards around financial resilience and customer service. This is an important step in enabling a better functioning retail market.

The scope of the review encompasses:

- conditions for suppliers entering the market (implemented in July 2019),
- ongoing requirements on suppliers, and
- arrangements for managing market exit.

This consultation sets out a package of proposals to strengthen ongoing requirements on suppliers and arrangements for market exit. These proposals seek to ensure suppliers have effective risk management processes in place, maintain appropriate governance and increase accountability, and that our market oversight is increased.

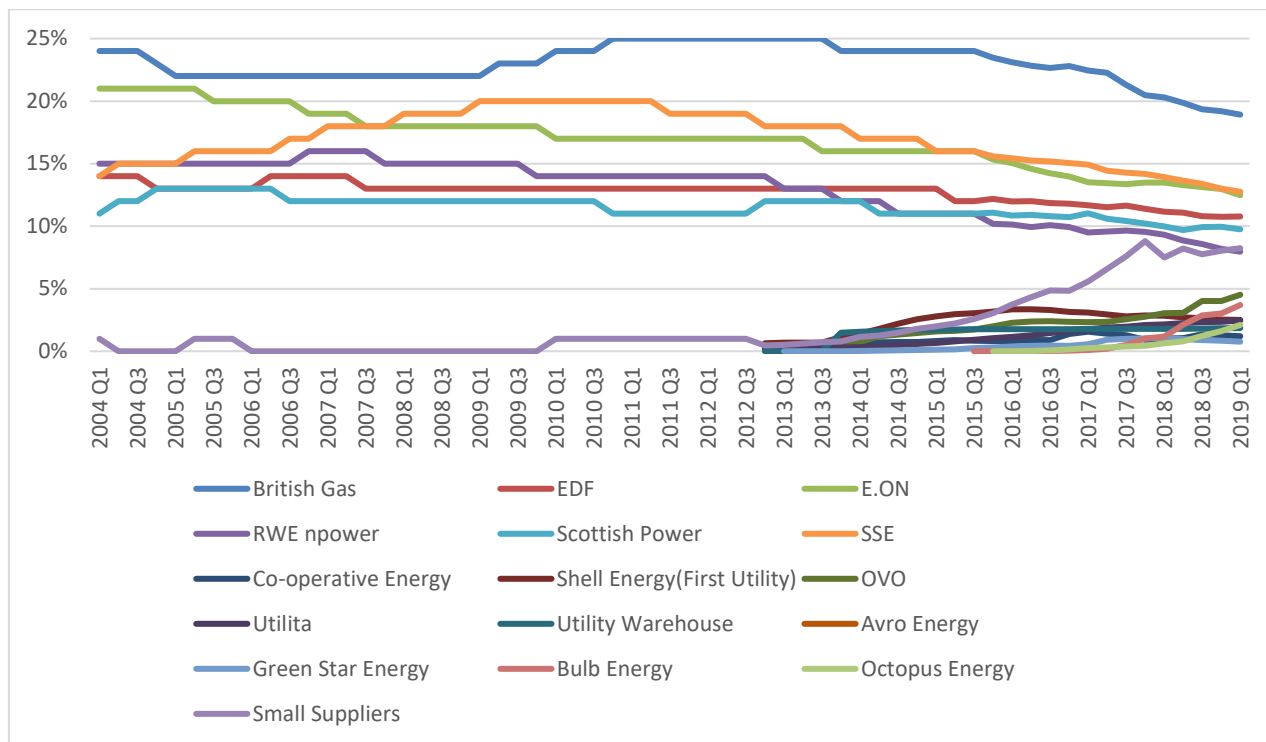
We also outline further steps we may take to reform industry exit arrangements beyond this consultation process. We aim to ensure our proposals raise supplier standards without placing an undue burden on new entrants or constraining innovation in the energy market.

Context and aims

The number of suppliers in the retail energy market has increased significantly over the last eight years. The market share of the six largest suppliers has decreased and now almost 30% of customers get their energy from small and medium suppliers (figure 1 below shows the change in market share of domestic electricity suppliers since 2004). This has brought benefits to consumers through increased price competition and pressure on incumbent suppliers to improve their customer service offering. However, we have also seen an increase in supplier failures and inadequate customer service provision in certain cases. Supplier financial difficulty and poor customer service are often interrelated. The arrangements for collecting and mutualising industry scheme costs could be updated to bring them up to speed with how the market has evolved in recent years. We are working with government to consider how best to do this.

Our current arrangements successfully protect consumers when a supplier fails. Nonetheless, failure can be disruptive and confusing for consumers, and can impose costs on competitors. Furthermore, frequent failures risk undermining consumers' confidence in the market and motivation to switch to a better energy deal. We want to strengthen our licensing and regulatory regime to drive up standards among poor performing suppliers in the sector and minimise competitors' and consumers' exposure to financial risks and poor customer service.

Figure 1: Changing market share of domestic electricity suppliers



Source: [Ofgem retail market indicators](#)

Our regulatory regime needs to be effective and proportionate in protecting consumers, while facilitating competition and innovation. At this stage in the transition to a low carbon energy system it is more important than ever that firms with innovative business models, products and services can enter the market in a way that delivers benefits for consumers. That said, energy is an essential service. There are minimum standards that suppliers must meet and any company entering the market needs to be well-prepared.

In a competitive market we would expect some suppliers to fail. We want to ensure that if this happens, their customers are protected and wider market impacts are minimised. From July this year, we introduced new requirements for gaining a licence to enter the market. The new application framework has provided us with new tools to assess applicant risk. We aim to build on our new entry requirements by introducing new ongoing requirements for active suppliers and arrangements to minimise the disruption of supplier market exits.

Ongoing requirements

We have set out a package of proposals under the following three themes.

Promoting more responsible risk management: This package of reforms looks to address the poor risk management practices we have seen from some suppliers. Ultimately the

consequences of poor risk management are felt by consumers, for instance through poor quality of service. We propose to:

- Require suppliers to put in place protections to ensure a proportion of their government scheme costs and customer credit balances are covered in the event of their failure, to minimise the amounts that need to be mutualised across other parties.
- Introduce new milestone checks, and a principles-based requirement to ensure suppliers have sufficient operational capability to effectively serve their customers as they grow.

More responsible governance and increased accountability: Inappropriate actions, or inaction, by suppliers can needlessly prolong or exacerbate harm to consumers. Our proposals aim to create more accountability, and incentivise more responsible and appropriate behaviour from those in senior positions. Our proposals would ensure company senior managers are subject to appropriate checks and that we can effectively hold companies to account. We propose to introduce:

- A new ongoing 'fit and proper' requirement.
- A principle for suppliers to be open and cooperative with the regulator.

Increased market oversight: Effective oversight of the market by Ofgem is essential to ensure we can identify potential risks to consumers or competition, and enable us to take timely action. It can also enable earlier preparation for Supplier of Last Resort processes if necessary. We propose to:

- Introduce new rules that would allow us to request independent audits of supplier customer service operations and financial status of poor performing suppliers.
- Require suppliers to maintain 'living wills' so that they are prepared for an orderly market exit, if needed, and to introduce new risk-based, enhanced reporting requirements alongside our new rules.

Exit arrangements

Many of the above proposals will help to reduce the likelihood and impact of supplier market exits. Where suppliers do fail, to ensure consumers experience minimal disruption, we propose to:

- Take steps to ensure administrators are held to some of the same standards as suppliers when they assume responsibility for a failed supplier's debt book.

In addition to the proposals we have put forward in this consultation, we consider there may be merit in exploring whether there are further ways to minimise the disruption associated

with market exit that are not related to supply licence conditions. This could include measures to enable splitting the portfolio of the failing supplier – we intend to explore with relevant stakeholders the extent to which work on this could be led by industry.

Next steps

We invite stakeholder views on our proposals by 03 December 2019. We aim to engage with stakeholders directly and after considering stakeholder responses we expect to progress to statutory consultation in early 2020.

1. Introduction

Question 1: Do you think the proposed package of reforms will help to reduce the likelihood of disorderly market exits, and the disruption caused for consumers and the wider market when suppliers fail? Are there other actions you consider we should take to help achieve these aims?

Question 2: Do you agree with the outputs of our impact assessment?

Question 3: What further quantitative data can industry provide to inform the costs and benefits of the impact assessment, particularly for cost mutualisation protections?

Question 4: Do you agree with the assumptions used to calculate the costs and benefits in our impact assessment? Please provide evidence to support further refinement.

1.1. The retail energy market has undergone a marked change in the last half decade. The number of energy suppliers in Great Britain has grown significantly, from 27 active domestic suppliers in December 2014 to 64 by June 2019.¹ In the same period, the domestic market share of small and medium-sized suppliers has grown to around 30%.²

1.2. We have seen an increase in innovation and the variety of new entrant business models. This has brought benefits to consumers in the form of improved customer service – seven of the top ten suppliers on the Citizens Advice customer service comparison tool are small or medium-sized suppliers.³ The growth of small suppliers has increased price competition, with some of the lowest tariff offers available from small and medium suppliers. Across the same time period, we have also seen increased consumer engagement, with annual rolling average switching rates around 20% in June 2019.⁴

1.3. However, increased market entry has created some risks for consumers. A number of energy suppliers have failed over the past 18 months, and others have failed to meet their financial commitments under government schemes such as the Renewables Obligations and Feed-In Tariffs regime.

1.4. A supplier that cannot meet its customer service and financial obligations can cause direct and indirect harm to energy consumers. Direct harm can manifest in different ways, leading to poor customer service or unfair treatment of customers. While our current

¹ Ofgem, [State of the energy market – 2019 report](#), October 2019

² Ibid

³ Citizens Advice, [Compare domestic energy suppliers' customer service](#), Rating for April to June 2019

⁴ Ofgem, [State of the energy market – 2019 report](#), October 2019

arrangements ensure there is continuity of supply and that customer credit balances are protected, a supplier failure can be disruptive and confusing for affected customers. Where a supplier fails, some of the sums it owes may need to be recovered from other suppliers – these costs may ultimately be borne by consumers, so supplier failures have consequences for all energy consumers. Other harm could arise from undermining consumer confidence in switching and the market as a whole, and in particular their willingness to switch to newer entrants.

Background to the Supplier Licensing Review

1.5. Our Supplier Licensing Review seeks to mitigate the potential for consumer harm by strengthening our regulatory regime to raise supplier standards of customer service and financial resilience. We aim to do this by introducing more stringent, but proportionate, requirements so that both consumers and Ofgem have confidence that suppliers will deliver a level of service that is appropriate for an essential service.

1.6. In June 2018, we announced our intention to review the supplier licensing arrangements, to ensure appropriate protections are in place against financial instability and poor customer service.⁵ The objectives and scope of this review encompasses three areas:

- i. Conditions for entering the market
- ii. Ongoing requirements, monitoring and engagement
- iii. Arrangements for managing supplier failure and exit.

1.7. In November 2018, we consulted on our proposals for amending the criteria and process for market entry.⁶ We published our policy decision on new entry in April this year, and our final decision on the new Applications Regulations in June.^{7,8} The new arrangements came into full effect on 5 July 2019.

1.8. In May 2019, we published a working paper setting out a long-list of potential reforms to ongoing requirements and exit arrangements.⁹ We sought stakeholder views on the

⁵ Ofgem, [Review of Ofgem's approach to licensing suppliers](#), June 2018

⁶ Ofgem, [Supplier Licensing Review](#), November 2018

⁷ Ofgem, [Supplier Licensing Review: Final Proposals on Entry Requirements](#), April 2019

⁸ Ofgem, [Decision on new Applications Regulations and guidance document](#), June 2019

⁹ Ofgem, [Update on the way forward for 'ongoing requirements' and 'exit arrangements' phases of the Supplier Licensing Review](#), May 2019

practicality and relative priorities of these options in a stakeholder workshop in June.¹⁰ We used this feedback to inform the policy proposals set out in this consultation.

Development of the package

1.9. At an earlier stage of the Supplier Licensing Review we outlined the four overarching principles we would use to inform our policy development. These are that:

- Suppliers should adopt effective risk management, be adequately prepared and resourced for growth, and bear an appropriate share of their risk.
- Suppliers should maintain the capacity and capability to deliver a quality service to their customers, and foster an open and constructive relationship with Ofgem.
- Ofgem should maintain proportionate oversight of suppliers, and there should be effective protections for consumers in the event of supplier failure.
- Ofgem’s licensing regime should facilitate effective competition and enable innovation.

1.10. In developing the proposals set out in this consultation we have sought feedback from a broad range of stakeholders. We have used this feedback to prioritise and refine the potential policy options. In their feedback, stakeholders were clear that “prevention is better than cure”. As such, they considered that new ongoing requirements would likely deliver significant benefits for consumers and the market generally.

1.11. Our proposals have been designed in light of this feedback. We consider it essential that arrangements for market exit are fit for purpose, and have proposed changes to improve the existing arrangements. However, the majority of our proposals are aimed at strengthening ongoing requirements to drive up standards and minimise any negative impact on the market and customers arising from market exit. The proposals have been designed in a targeted way to enable us to take action against poor supplier practice. We expect that the reforms, combined with the new entry requirements that came into effect in July, will drive up standards and increase regulatory scrutiny of poor performing suppliers without imposing undue burden on the rest of the market.

1.12. The proposals we put forward are intended to function together as a package. For instance, we consider that proposals to strengthen ongoing requirements are likely to reduce the need for additional rules around exit arrangements. Each individual proposal should have

¹⁰ Ofgem, [Supplier Licensing Review workshop summary notes and slides – 21 June 2019](#), July 2019

a positive impact and, taken together as whole, we consider that the package should effectively protect consumers from the harmful effects associated with supplier market exits. For those suppliers that are already operating in a well-governed, consumer-focused way, implementing the new requirements may require only limited changes.

1.13. Our proposals focus predominantly on areas where change can be effected via supply licence amendments. In certain areas we note where we would welcome further stakeholder views before deciding how to proceed. In some cases, we may look to industry to lead the development of options for change.

1.14. In this consultation we summarise the analysis conducted as part of our impact assessment for each proposal. The draft impact assessment has been published alongside this document. We welcome stakeholder views on the content of this assessment.

1.15. In the case of certain proposals, we consider that an implementation period may be warranted to enable suppliers to prepare for, and successfully adopt, the changes required. We set out our initial view of how long this period should be in the chapters that follow. We welcome stakeholder views on the appropriate length of any implementation period.

Links and dependencies

1.16. This review is one of a number of initiatives that are currently underway relating to market entry and exit, how we licence suppliers, and the standards we hold them to.

1.17. **New entry requirements:** In our April policy decision on new entry requirements we confirmed that we would apply new checks to ensure applicants are fit and proper to hold a licence, have appropriate resources to support their entry, and understand and can fulfil their regulatory obligations. Our proposals for ongoing requirements and exit arrangements have been designed to complement the new entry regime.

1.18. **Future Energy Retail Market Review:** Government and Ofgem are conducting a joint Future Energy Retail Market Review¹¹ to investigate what policy, legal and regulatory changes might be needed to promote competition and innovation while ensuring future consumers are protected. We do not consider that any of our proposals within this consultation would create a significant barrier for any new entrant of innovators. Regardless

¹¹ Ofgem, [Flexible and responsive energy retail markets](#), July 2019

of the type of innovation, we will always aim to ensure that only viable, well-run businesses participate in order to protect consumers.

1.19. **Conduct and enforcement:** As part of our compliance and enforcement activities, we engage with suppliers through account managers, proactive projects that tackle areas of concern and through engagement with respect to particular issues that have come to our attention. When we engage on particular issues we have information-gathering powers that can often require the supplier to provide us with large amounts of data and information at short notice. Through the Supplier Licensing Review, we aim to augment our ability to effectively scrutinise suppliers and take action where they fail to meet the standards expected of providers of an essential service.

Structure of this document

1.20. This document is structured as follows:

- Chapter 2 outlines our proposals to **promote more responsible risk management** among suppliers.
- Chapter 3 sets out our proposals to **improve supplier governance and accountability**.
- Chapter 4 outlines the steps we intend to take to ensure we have **effective market oversight** and monitoring.
- Chapter 5 covers our proposed measures to reduce the disruption associated with **supplier market exits**.
- Appendix 1 to this document sets out a draft version of the new licence conditions we propose to introduce to give effect to the proposals set out in this consultation.

Responses and next steps

1.21. We welcome stakeholder views on the proposals set out in this document, and on the content of the impact assessment published in parallel, by 03 December 2019. Please send your response to licensing@ofgem.gov.uk

1.22. We intend to engage with stakeholders on the substance of our proposals while this consultation is open. We intend to convene an industry workshop in the coming weeks and we are likely to engage bilaterally with certain stakeholders.

- 1.23. Subject to the responses received to this consultation and feedback received via our engagement with stakeholders, we intend to issue a statutory consultation on our proposals in early 2020. We would then expect to make our decision in the first half of 2020. This would, allowing for an implementation period for some remedies, enable most of the new requirements to be in place before the end of the summer next year.

2. Promoting better risk management

Section summary

The consequences of poor risk management are ultimately felt by consumers. We propose to address these risks to consumers by putting in place measures to reduce the need to mutualise costs in the event of supplier failure, require suppliers to ensure they have appropriate operational capability to effectively discharge their obligations, and introduce new checks at milestones and trigger points.

Question 5: Do you agree with our proposed option to cost mutualisation protections? Are there other methods of implementing this proposed option? Please provide an explanation, and if possible any evidence, to support your position.

Question 6: Do you agree with our proposal to introduce new milestone assessments for suppliers? Do you think the milestones we have proposed and the factors we intend to assess are the right ones? Are there additional factors we should consider to help us to identify where suppliers' may be in financial difficulty?

2.1. One of the principles of our Supplier Licensing Review is that suppliers should adopt effective risk management, be adequately prepared and resourced for growth, and bear an appropriate share of their risk. We expect suppliers to maintain the capacity and capability to deliver a quality service for their customers.

2.2. In this chapter, we outline what we aim to achieve and our specific proposals for the changes we consider will best promote better risk management among suppliers. These proposals are:

- Cost mutualisation protections: a new requirement for suppliers to put in place protections to cover a proportion of credit balances and government scheme costs in the event of their failure, to minimise the costs that would otherwise be mutualised across other parties,
- Operational capability: a new principles-based requirement for suppliers to have sufficient operational capability to effectively serve their customers, and
- Milestones assessments: new checkpoints, determined by customer numbers and financial status, at which Ofgem would scrutinise suppliers and impose conditions should they not demonstrate they meet certain standards.

What we aim to achieve

2.3. Poor risk management by suppliers can manifest in a number of different ways, including:

- Unmanaged customer growth and lack of preparedness to meet financial and regulatory obligations
- Lack of appropriate systems and processes essential to providing a quality service to customers
- Unsustainable use of customer credit balances, and
- Poor identification and mitigation of any risks to compliance or potential detriment to consumers.

2.4. These factors can cause direct and indirect harm to customers in the form of poor customer service and greater likelihood of failure, which can be disruptive and mean that certain costs need to be recovered from consumers. The new entry requirements we introduced in July this year aim to raise standards among new market entrants to mitigate the potential for harm. We consider that applying heightened standards to suppliers already operating in the energy market could also be beneficial.

Cost mutualisation protections

2.5. Several government schemes, including the Renewables Obligation, Feed-in Tariffs, Warm Home Discount and Capacity Market, have mechanisms to spread the cost of unrecovered amounts across the wider industry.¹² What this means in practice is that, for example, where a supplier fails without settling their scheme obligation costs, these costs may then be spread across other suppliers and ultimately passed on to consumers. A similar outcome is achieved, though via a different mechanism, in the case of customer credit balances, the cost of which can be recovered from wider industry via a Last Resort Supplier Payment (LRSP).¹³ In some cases, the appointed Supplier of Last Resort (SoLR) agrees to absorb some or all of the cost of customer credit balances itself, rather than make an LRSP claim. In this chapter, we refer to this spreading of costs as 'mutualisation'.

¹² Appendix 3 to this document sets out further background information on the operation of the mutualisation mechanisms of these schemes.

¹³ More detail on Last Resort Supplier Payments is included in our [Supplier of Last Resort: Revised Guidance 2016](#)

2.6. Mutualisation can be an effective way to ensure that the relevant schemes continue to operate as intended and that individual customers' credit balances are protected. However, it can mean that those suppliers that manage their costs responsibly are required to cover some of the unpaid costs of other suppliers. It can also increase costs for consumers as a whole.

2.7. In our November 2018 consultation, we set out some initial ideas for arrangements that could reduce the costs that would need to be mutualised in the event of supplier failure. We built on these ideas in our May 2019 working paper. These options were aimed at ensuring that, where possible, suppliers bear the costs of their own risks, including when they fail.

Stakeholder views

2.8. There was strong and almost universal support at our June 2019 workshop for suppliers to have provisions in place to prevent the need for customer credit balances to be mutualised in the event of their failure. A smaller, though still significant, number of suppliers suggested that these provisions should also apply to Renewables Obligation amounts. A majority of attendees argued in favour of an enforceable principle that would give suppliers the flexibility to decide the provisions that best suit them, while others preferred prescriptive obligations.

2.9. Stakeholders generally argued in favour of mandating suppliers to provide tangible guarantees of payment – eg by requiring parent company guarantees, or insurance facilities – rather than softer requirements such as requirements to ensure upcoming payments are factored into cash flow forecasts. They argued that the latter type of remedy was unlikely to be as effective at reducing the risk of mutualisation.

2.10. Many stakeholders felt that rules for protections against credit balance mutualisation should be extended to any potential costs that could be shared across the industry in the event of failure.

Our views and options

2.11. We agree with stakeholders that our arrangements should minimise the extent to which suppliers build up costs that then need to be mutualised in the event of their failure. We want to take steps to ensure this doesn't happen, while continuing to protect customer credit balances and ensure continued government scheme operability.

2.12. **Scope of protections:** There are a number of options for how broad the protections against cost mutualisation could be. We have considered whether protections should be introduced for credit balances or for sums owed under government schemes too. We have also considered whether suppliers should be required to put arrangements in place to protect the entirety of these costs, or just a proportion. In determining the right level of protection to apply, we need to strike a balance between minimising the risk of mutualisation and ensuring that we do not create inappropriately high barriers to entry and innovation due to the costs the protections may impose on suppliers.

2.13. Requiring suppliers to put in place arrangements to cover all of their customer credit balances and scheme liabilities in the event of their failure is likely to have the greatest direct benefits in lowering the likelihood and impact of cost mutualisation. It would assign the costs associated with the risk of non-payment to those parties responsible for that risk. Suppliers that can demonstrate financial responsibility are likely to face smaller, or possibly no, additional costs to implement the protection required. In doing so, it would remove the risks and costs that currently apply to suppliers and consumers in general, and apply them firmly to those suppliers that may be less financially resilient. These benefits also apply, but to a slightly lesser extent, were the protections to cover just credit balances, or a proportion of credit balances and scheme liabilities.

2.14. Such a requirement would, however, be likely to impose significant costs on suppliers. This would also represent an increased barrier to entry to new suppliers. In certain cases, the business models of these parties may be innovative and untested. This may make it more difficult for them to put in place the necessary arrangements at a reasonable cost. Just covering credit balances would likely require the lowest additional cost, whereas covering all credit balances and all scheme liabilities would likely be the costliest to implement.

2.15. **Ways of providing protections:** We have identified a number of different approaches suppliers could take to prevent costs being mutualised. These include parent company guarantees, third party guarantees, insurance schemes, principles-based cost mutualisation protections, and a requirement to set aside funds in an escrow account. We could also allow suppliers to choose the right protection for them from this 'menu' of options, and provide room for them to propose other mechanisms to us. The appropriateness of the various options may depend on the costs being protected and individual supplier circumstances – including size, commercial structure and business model.

2.16. Each option is likely to entail some costs. Some options may be more cost effective for some suppliers than others. To secure parent company or third party guarantees may be relatively straightforward and inexpensive for some parties, but not for others. Ring-fencing

credit balances could also reduce suppliers' access to a stream of working capital that would need to be obtained from another source, with its own cost. These costs are likely to be passed on to consumers.

2.17. Mechanism for returning customer credit balances: Under our current SoLR process, where the appointed SoLR agrees to honour the credit balances of the customers of a failed supplier, those balances are reimbursed or credited to the customer by the SoLR once their new account is set up. If the failing supplier has protections for credit balances in place, we would need to ensure that appropriate mechanisms are in place to ensure a smooth return of balances to consumers, whether by the SoLR¹⁴ or another party. If another party is responsible for returning the balances to the consumer, or if customers could make a claim to recover the funds from the relevant party themselves¹⁵, we are mindful that our ability to ensure they behave in the interests of consumers may be more constrained, as those parties may not be subject to our licence conditions.

2.18. Effectiveness of protections once a supplier enters financial difficulties: In developing our options, we considered how effective our proposals are likely to be both in 'steady state' and when a supplier enters financial difficulties. Some requirements, for instance principles-based rules to protect credit balances, may be effective in changing the culture of a company and ensuring responsible use of such funds under normal circumstances. However, the threat of action for a breach of such a principle, in isolation, may be less effective when a supplier starts to fail and needs access to monies to fund its ongoing operation. Our proposals aim to function together as a package to provide comprehensive protection against poor practices up to and including failure.

2.19. Implementation: Some of the options we have considered are likely to involve additional costs for some suppliers, and may require changes to financial arrangements. As such, we consider an implementation period may be warranted after we make our decision. We set out indicative timeframes for implementing our proposal below, and welcome stakeholder feedback on whether this is appropriate, including whether a single deadline or staged milestones should be adopted. We intend to provide an updated view of the appropriate implementation period when we issue our statutory consultation.

¹⁴ To ensure the SoLR would receive or be able to call down the required sums to refund the credit balance, we would in this case need to specify in the documentation setting up the protection mechanism that the funds should be paid out to a SoLR appointed by Ofgem.

¹⁵ This approach would be similar to that set up under the [Financial Services Compensation Scheme](#) in the financial services industry.

Our proposal

Based on the considerations outlined above, and the analysis set out in our draft impact assessment, we propose to introduce a requirement for suppliers to put in place arrangements to protect a minimum of 50% of their customer credit balances in the event of their failure. Our draft impact assessment outlines that protecting this amount can result in a net benefit for GB consumers over the next decade. We consider this policy option best delivers the intent of our Supplier Licensing Review principles, and is likely to deliver the greatest benefits for consumers, while minimising costs to existing and prospective market participants. We do not intend to be fully prescriptive about the mechanism suppliers must use to provide the cost protections. Instead, we would set out a 'menu' of options from which suppliers could choose, and would provide flexibility for suppliers to propose alternative options. We will consider the exact mechanism for returning credit balances to customers in our next phase of work.

Following initial stakeholder feedback, we would expect to allow a 3-6 month period after our decision for suppliers to implement this new requirement. We welcome feedback on the appropriateness of this timeframe.

Operational capability

2.20. In our May 2019 working paper, we said we wanted to make it explicitly clear to suppliers that we expect they have the capability, processes and systems in place to enable them to effectively serve all their customers and comply with their regulatory obligations, by introducing an enforceable, principles-based requirement. This is important, as without this foundation in place, suppliers are unlikely to be able to deliver the level of service required in order to meet other licence obligations – for example the requirements under the Standards of Conduct.¹⁶

2.21. This requirement would complement existing rules by strengthening and supporting our existing expectations of suppliers. Having appropriate capability, processes and systems in place is a pre-requisite to being able to meet their obligations. Therefore, we think that making this an explicit overarching requirement will help us to hold suppliers to account

¹⁶ The Standards of Conduct are set out in electricity and gas standard supply licence condition 0.

where necessary and ensure that they maintain the appropriate capability to serve their customers.

Stakeholder views

2.22. Stakeholders at our June 2019 workshop were generally supportive of us introducing a principles-based requirement for suppliers to have sufficient operational capability to effectively serve their customers. Stakeholders argued that a lack of operational capability was often a significant contributing factor, and increased the disruption caused, when a supplier fails. Some stakeholders questioned whether this requirement would duplicate existing conditions – in particular they pointed to the Standards of Conduct, and suggested that suppliers should already be ensuring they have the necessary arrangements in place to meet their obligations.

Our views and options

2.23. We share stakeholders' view that it is essential suppliers have the right arrangements in place to effectively serve their customers and meet their regulatory obligations. We believe that introducing a new principle to make our expectations of suppliers more explicit would help to encourage a positive culture change among poor performing suppliers. The new principle would extend to all of suppliers' operations, such as customer service arrangements, ensuring preparedness for growth by having relevant IT or billing systems in place, industry arrangements.

2.24. **Expectations of suppliers:** Many, if not most, suppliers are already operating in line with the spirit of our envisaged operational principle. As such, this new requirement would be targeted at poor performing suppliers. We expect that its introduction would encourage suppliers to take steps to ensure that their internal processes and systems enable them to serve their customers and comply with their obligations. This would include taking active steps to identify and mitigate risks. To support our ability to assess the steps taken by suppliers in this regard, we consider it may be beneficial to specify that suppliers must be able to demonstrate compliance with this obligation to Ofgem.

2.25. **Interactions with existing regulations:** We agree with stakeholders that introducing an operational principle interacts with some existing requirements. We have previously made it clear that we expect these standards from suppliers, although recent case studies demonstrate that there are a number of suppliers not giving due regard to their operational capability. Where appropriate, we have opened enforcement or compliance cases to address these issues.

2.26. We believe having an explicit overarching principle, to address situations in which suppliers' operational capability is insufficient to serve their customers or meet their regulatory obligations, would reinforce our ability to take swift action early and would complement existing regulations. Requiring suppliers to also identify, assess and adequately manage any risks of non-compliance of this requirement should further drive a cultural shift among suppliers – encouraging them to have better risk management overall. We believe there may be benefit in making these expectations explicit, and that it may complement and strengthen existing requirements.

Our proposal

We propose to introduce a new principle-based requirement for suppliers to ensure they have, and can demonstrate that they have, the capability, processes and systems in place to enable them to effectively serve all their customers and comply with their regulatory obligations.

We do not anticipate that any implementation period outside of the statutory 56 days would be required to implement this proposal.

Milestone assessments and trigger points

2.27. Under our recently-introduced new entry requirements, when applying for a supply licence, we ask applicants to provide us with information to demonstrate, among other matters, that they are adequately resourced and ready to serve customers. However, there is currently no specific mechanism to ensure that, as suppliers grow and develop, they continue to be prepared to serve their customers. As being underprepared for growth can result in poor customer service and, potentially, supplier failure, we want to increase scrutiny of suppliers at appropriate points in time after their market entry.

2.28. In our May 2019 working paper, we said we would consider whether we should require suppliers to demonstrate their plans to resource and operate their business as they grow. We would do so by introducing milestone assessments to conduct additional checks ahead of certain customer number thresholds, before a supplier is able to grow further.

2.29. We already monitor supplier growth, and have existing compliance and enforcement tools to step in when we see evidence of consumer harm. We want to build on these existing

tools to ensure that we enhance our scrutiny of suppliers at key junctures in their development. This would help to ensure suppliers are adequately resourced and prepared for growth and help to mitigate the risk of consumer harm before it happens.

2.30. We also considered whether we should introduce new checks where we were concerned about a supplier's financial position, and whether we should introduce new arrangements enabling us to take action to guard against consumer harm by restricting suppliers from taking certain actions should they be unable to demonstrate their resilience. For example, we could place restrictions on the ability of suppliers to change their payment collection pattern to taking advance payments from customers.

Stakeholder views

2.31. At our June 2019 stakeholder workshop, stakeholders responded positively to the idea of conducting additional milestone assessments at key points in their growth. This was identified as one of stakeholders' priority measures for us to take forward.

2.32. Stakeholders suggested a number of factors for determining the appropriate milestones to apply – the most popular of these was to set the milestones on the basis of customer number thresholds. One supplier suggested that triggers should be based on flexible, rather than static, criteria. They suggested that a number of different criteria could be used to trigger enhanced reporting requirements and assessments, including: offering below cost tariffs, rapid customer growth, significant change in volumes of electricity or gas supplied, customer service problems, change of control of the business, deviation from initial entry plans, being appointed as a SoLR and lack of cooperation with Ofgem.

2.33. In general, stakeholders encouraged us to adopt a risk-based approach to the setting of milestones and the checks we conduct around those milestones. They considered that certain stages of growth or supplier practices were more likely to generate a risk of consumer harm, and that our efforts should be focused on those points rather than increasing our monitoring across the board. They did not provide any strong views about the restrictions we could apply where suppliers cannot demonstrate their financial resilience.

Our views and options

2.34. Suppliers that have failed since 2016 grew to their peak size in the year they failed. Some suppliers that have failed in that timeframe have had higher than average growth rates than other suppliers, in some cases much higher. This indicates that suppliers are not always effectively set up to serve a growing number of customers or larger volumes of energy. Even

where suppliers don't fail, uncontrolled growth could cause harm in terms of poor customer service for their customers, as they may not have effective systems and processes in place for billing and communications, for instance.

2.35. We share stakeholders' views of the importance of having additional milestones at which we scrutinise suppliers' capability to effectively customers. We consider introducing additional checks would help to ensure that suppliers are adequately prepared for growth before they reach certain key milestones. It would also enable us to take early steps to prevent consumer harm from occurring. We set out below our considerations for how we might set and apply these milestones.

2.36. **Scope of assessments:** It may be more proportionate at this time to focus milestone assessments and trigger points on domestic suppliers. The domestic energy market is where the number of customers impacted by supplier poor practice and failure, and the severity of that impact, is highest. It is also the market segment where many of the customer thresholds at which additional supply obligations apply arise. If suppliers are not effectively set up to discharge these new obligations that could give rise to a risk of consumer harm.

2.37. **Milestone factors:** We considered the factors for how the milestones could be set. These include:

- **Customer numbers:** A requirement that suppliers would have to undergo checks conducted by Ofgem before they could exceed certain defined customer number thresholds. These checks would be similar in nature to our new entry requirements.
- **Deviation from entry plans:** Where a supplier has significantly deviated from the business and growth plan submitted to us at entry, Ofgem could conduct additional checks. This may be challenging to operationalise – suppliers may need to adapt their business plans in response to changes in the wider market conditions. We do not propose to proceed with this option.
- **Financial difficulty:** Where suppliers display certain criteria that give us cause for concern about their financial resilience, this could trigger additional assessments of their financial status and ability to serve customers.

2.38. In each case, we could have the ability to impose certain measures via a direction should we have concerns about a supplier's business plan following these checks. These measures could include limiting their ability to take on new customers or to make changes to their payment collection patterns, eg by increasing direct debit amounts at times of financial strain. We expect the checks themselves would be similar in nature to our new entry

requirements, for instance including checks of supplier IT systems and how that IT is integrated with the business and growth strategy.¹⁷

2.39. These checks and preventive measures could help to enhance our oversight of suppliers in a risk-based manner, targeting key milestones or criteria that might indicate an increased risk of harm to consumers. They could also help to prevent unmanaged growth and potentially harmful actions by suppliers.

2.40. **Determining milestones:** We consider there may be benefits in defining some of the milestones for assessments in terms of the customer number thresholds at which certain regulatory obligations start to apply. These include:

- 50,000 customers: requirement to offer a variety of payment terms, including prepayment meters.
- 150,000 customers: From 01 April 2020, this is the threshold from which suppliers' Energy Company Obligation and Warm Home Discount obligations apply. New Smart Export Guarantee requirements introduced by government.
- 250,000 customers: Feed-in Tariffs and Green Deal Obligations.
- 500,000 – 800,000: Although we are not aware that any additional obligations kick in at this level, we consider that there may be benefits in applying an additional check in this range, beyond which we would not have any further milestones.

2.41. We anticipate that these customer number thresholds would apply in terms of the number of unique customer accounts, rather than meter points. This may make it easier for suppliers and Ofgem to implement, as there would be less confusion about when checks should happen where a supplier has, say, 40,000 electricity meter points, and only 10,000 gas meter points. We would expect suppliers to be aware of these customer number caps and manage the assessments accordingly – whether by applying for a milestone assessment in good time or adjusting marketing activities to slow down customer acquisitions should that be necessary. In a situation where a supplier must turn away potential customers, they would need to consider the messaging carefully. Equally, we would expect to ensure that we assess the information provided and make a decision as quickly as reasonably possible so as not to unduly hinder supplier growth. We may look to apply a key performance indicator to ensure this is the case. Additionally, we may look to apply appropriate charges for these assessments.

¹⁷ Ofgem, [Guidance: Applying for a gas or electricity licence](#), June 2019

2.42. We also consider there may be benefits in having a 'dynamic' assessment at the point at which we consider suppliers may be in financial difficulty. The factors for determining where this might be the case could include whether there are any outstanding payments due to industry parties, outstanding statutory demands, unusual or sharp price or direct debit changes. Given the array of indicators that can give rise to concerns about a supplier's financial health, we do not consider at this stage that a fixed set of criteria should apply.

Our proposal

We propose to introduce new requirements for domestic suppliers to undergo milestone assessments conducted by Ofgem at certain customer number thresholds to ensure that they are adequately prepared and resourced for growth. These customer number thresholds would be at 50,000, 150,000, 250,000 and at a point to be determined between 500,000 and 800,000. Suppliers would not be able to pass the threshold of customers until they had successfully passed the milestone assessment. Our impact assessment identified that introducing this policy could result in improvements to the quality of service consumers receive.

We would also require suppliers to undergo additional assessments should they indicate signs of financial difficulty. Should this be the case we would place limits on suppliers' ability to alter their existing payment collection patterns. We would welcome stakeholder feedback on whether we should go further and place further limits on suppliers to take actions that may cause consumer harm should they be in financial difficulty.

We do not anticipate that any implementation period outside of the statutory 56 days would be required to implement this proposal. As part of our next phase of work we will consider whether a charge, similar to our licence application fee, is appropriate for the milestone assessments.

3. More responsible governance and increased accountability

Section summary

We propose to introduce two new requirements to mitigate the risks of poor supplier behaviour causing detriment to consumers or the energy market. The proposals are targeted at promoting more responsible governance and increased accountability among individuals with significant managerial responsibility or influence in supply companies. They comprise of an ongoing 'fit and proper' requirement and a principle to be open and cooperative with the regulator.

Question 7: Do you agree with our proposal to introduce an ongoing fit and proper requirement? Are there additional factors, other than the ones we have outlined, you believe suppliers should assess in conducting checks?

3.1. In the last chapter we outlined the steps we want to take to ensure suppliers manage risk appropriately. It is equally important that they have good governance structures in place, and strong accountability among management. They should also be prepared to maintain a constructive relationship with Ofgem as the regulator.

3.2. In this chapter, we outline what we aim to achieve and our specific proposals for the changes we consider will best promote more responsible governance and accountability among suppliers. We propose new licence requirements for suppliers to:

- Assess whether individuals with significant managerial responsibility¹⁸ or influence in their business are fit and proper, and
- Be open and cooperative with the regulator.

What we aim to achieve

3.3. If suppliers do not have good governance arrangements and strong senior management accountability they are more likely to make poor decisions, which may lead to

¹⁸ Significant managerial responsibility or influence means where a person plays a role in—
(a) the making of decisions about how the whole or a substantial part of an undertaking's activities are to be managed or organised, or
(b) the actual managing or organising of the whole or a substantial part of those activities.

their failure, and cause greater disruption when they do fail. This could be harmful for consumers, who may receive poor quality customer service and may ultimately have to pay for any costs that need to be mutualised in the event of a supplier failure.

3.4. Our new entry requirements for suppliers included an expanded 'fit and proper' assessment of licence applicants. Entrants are now required to disclose – among other things – if key persons involved in the applicant company have been connected to any SoLR events, recent Ofgem compliance or enforcement action, or previous insolvencies.¹⁹

3.5. Company management can change, and a single point-in-time check may not be as effective as ongoing checks. We want to build on the new entry requirements to ensure that supplier senior managers are held to an appropriate standard on an ongoing basis, not just when they receive their licence.

3.6. We also want to ensure that suppliers are open and cooperative with Ofgem. This relationship becomes increasingly important where a supplier enters financial difficulties, as a cooperative relationship can help to improve the SoLR process, making sure that affected consumers experience minimal disruption. We expect suppliers to be open and cooperative with us now. There may be benefits in making this an explicit requirement.

Ongoing fit and proper requirement

3.7. In our November 2018 consultation, we set out a high-level proposal for an ongoing fit and proper requirement to apply to individuals with significant management responsibility at suppliers. In our May 2019 working paper, we said that one way of operationalising such a requirement could be to require licensees to do their own due diligence to certify that relevant persons are fit and proper. We suggested that another option would be for Ofgem to have a more proactive role in overseeing persons entering the market before taking on roles with significant influence at existing licensed businesses.

3.8. The purpose of an ongoing fit and proper requirement would be to increase the accountability of individuals with significant managerial responsibility or influence in energy supply companies. It would require suppliers to assess whether individuals are fit and proper before employing them in senior positions, and on an ongoing basis. In so doing, it would

¹⁹ Ofgem, [Decision on new Applications Regulations and guidance document](#), June 2019

help to raise management standards across the industry and prevent those with an inadequate track record from re-entering the market.

3.9. This requirement should also incentivise a failing supplier to exit the market in a more responsible way, as the actions and behaviours of senior individuals could be relevant for any future senior roles within supply companies.

Stakeholder views

3.10. At our workshop earlier this year, stakeholders were broadly supportive of an ongoing fit and proper test. They argued that if the test is applied at entry, then it would seem appropriate to apply the same standards on an ongoing basis. They felt that it would encourage suppliers to take their obligations seriously, increase trust in the market, and discourage activities that may cause harm to consumers and the industry generally. Stakeholders did not forward detailed suggestions for how the new requirement could be implemented in practice.

Our views and options

3.11. We consider that, in the interests of consumers and the market as a whole, supply businesses should be operated by fit and proper individuals. At entry, we consider whether a licence applicant (usually a company) is suitable to be granted a licence. On an ongoing basis, it may be appropriate to apply a similar standard to ensure senior supplier personnel and decision-makers are fit and proper for their role.

3.12. **Scope of requirement:** We have considered whether it would be appropriate to apply a fit and proper persons test at an individual level, or to introduce a more general requirement. An individual level assessment, similar to that deployed as part of our entry checks, may be effective in ensuring that specific individuals who have the potential to cause harm to consumers, or who have done so in the past, are prevented from attaining significant influence at any supplier. However, should Ofgem be responsible for carrying out checks on every individual in a management position at a supplier that may entail a significant regulatory burden.

3.13. **Who carries out the checks:** We have considered whether it would be appropriate for Ofgem, suppliers or other parties to carry out fit and proper checks. There may be benefits in Ofgem conducting the tests – this would ensure independence and impartiality in assessing an individual's fitness for their role. However, although we oversee the suitability of applicants at point of entry, the same need not necessarily be the case on an ongoing basis.

In general, it is suppliers' responsibility to ensure that they comply with their regulatory obligations. We monitor suppliers' practices and take action where they fall short of our expectations. A fit and proper requirement could be implemented in a similar way – suppliers could be required to put in place robust processes to ensure that individuals with significant management responsibility are subject to appropriate suitability tests. This may be a proportionate and effective way of delivering the aims set out at the start of this chapter.

3.14. What factors are assessed: There are a range of factors that could be considered in determining whether an individual is fit and proper for their role. These factors could include background checks for past criminal convictions, director disqualifications, and previous involvement in company insolvencies or SoLR events. It may be appropriate to have a prescribed minimum set of checks to be carried out to provide a measure of consistency across the industry and to align with the checks carried out at entry. Additional checks may be appropriate to take into account the specific role, responsibilities and influence of the individual in question.

Our proposal

We propose to introduce an ongoing fit and proper licence requirement, where suppliers are required to have the processes and systems in place to ensure relevant persons are fit and proper. We consider that introducing this requirement would raise overall standards by ensuring there is appropriate scrutiny of supplier senior managers and individual accountability. It would also help to support good governance practices, and provide us with additional tools to intervene where these are not in place.

We propose that suppliers conduct this assessment of relevant persons periodically, and must provide evidence of compliance if requested by Ofgem. Our draft impact assessment outlines further that this would result in a considerably lower administrative burden on the supplier and the regulator than if the regulator were to carry out such assessments. We set out the minimum criteria we consider should be assessed in Appendix 1.

We do not anticipate that any implementation period outside of the statutory 56 days would be required to implement this proposal.

Principle to be open and cooperative with the regulator

3.15. In our May 2019 working paper, we outlined at a high level the potential merits of a new principles-based requirement for suppliers relating to their behaviour, governance and structure.

3.16. It is important that suppliers engage in an open and cooperative manner with Ofgem. Early and proactive engagement can help to minimise the disruption that can occur when a company is in financial difficulty. In particular, it can help to ensure that the process for onboarding customers with a new supplier is smooth. Early engagement can also contribute to a swifter resolution of compliance-related issues.

3.17. Currently, most suppliers are already open and cooperative with Ofgem, and certain existing rules can help to prevent the most egregious offences – for instance, it is a statutory offence to provide false statements to the Gas and Electricity Markets Authority.²⁰ In addition, our Enforcement Guidelines already encourage self-reporting of risks and issues to our compliance and enforcement teams.²¹ In most cases, this counts in the company's favour in our decision as to whether to prioritise enforcement action and may be reflected in any penalty.

3.18. However, we have seen some cases of suppliers that have not displayed these behaviours. The consequences of this can be delays to issues being resolved and an increased risk of consumer detriment or market disruption. A new 'open and cooperative' requirement would provide a route to take direct action where suppliers are putting consumers or the market at risk.

Stakeholder views

3.19. Some stakeholders commented at our workshop and in response to our November consultation that we should aim to tackle poor supplier behaviours as part of this review. Some felt that companies should be encouraged to flag issues proactively to Ofgem and that we should consider new requirements where poor behaviours could contribute to poor consumer outcomes or market distortions. Suppliers did not, however, identify this as a particular priority requirement to introduce compared to some other parts of the package.

²⁰ Section 43 of the Gas Act 1986 and Section 59 of the Electricity Act 1989

²¹ Ofgem, [The Enforcement Guidelines](#), October 2017

Our views and options

3.20. We consider there are benefits in introducing a new principles-based requirement for suppliers to be open and cooperative with us. Although in times of supplier financial difficulties they may not prioritise compliance with such a requirement, a new principle may help to support a cultural shift among poor performing suppliers well in advance of that point.

3.21. We have considered what factors we might take into account in determining whether a supplier is being open and cooperative with Ofgem. These include:

- Willingness to be constructive when engaging with us, both in compliance conversations and policy development.
- When providing us with information, ensuring it is timely, candid and accurate.
- Proactively coming to Ofgem with relevant issues or events where there is potential risk of (or has been) actual detriment to consumers or the market.

Our proposal

We propose to introduce a new principles-based requirement for suppliers to be open and cooperative with Ofgem. This may encourage a behavioural shift among poor performing suppliers, support a swift resolution to compliance issues and help to minimise disruption for consumers in instances where suppliers are in financial difficulty.

We do not anticipate that any implementation period outside of the statutory 56 days would be required to implement this proposal.

4. Increased market oversight

Section summary

It is essential that we have effective oversight of the market to alert us to potential risks to consumers or competition, facilitate timely compliance action and enable earlier preparation for Supplier of Last Resort processes if necessary. To support this, we propose to introduce new rules to enable us to request independent audits, assess readiness for orderly exit through living wills, and ensure effective and proportionate reporting requirements are in place.

Question 8: Do you agree with our proposal to require suppliers to produce living wills? What do you think we should include as minimum criteria for living will content?

Question 9: Do you agree with our proposed scope for independent audits? Please provide rationale to support your view.

4.1. In a competitive market we would expect some suppliers to fail. We want to ensure that if this happens, their customers are protected and wider market impacts are minimised. To enable us to do this effectively, we need to have effective oversight of the market. This means having sufficient information to identify risks of consumer harm so that we can step in early to prevent it from happening or to minimise it when it does.

4.2. In this chapter, we outline our specific proposals to increase our market oversight. We propose to introduce new rules that would:

- Require suppliers to produce an internal 'living will' setting out the terms of their orderly market exit and publish a public disclosure of this to promote confidence in the market.
- Allow Ofgem to require suppliers to undertake independent audits in certain circumstances.
- Require suppliers to notify Ofgem when there are changes of control of the company and ensure proportionate reporting requirements are in place.

What we aim to achieve

4.3. We want to improve our ability to oversee the market and our ability to act where needed to mitigate the consumer harm and wider market impacts that can arise in cases of supplier financial difficulties and failure. This is in line with our review principles that suppliers should adopt effective risk management, foster an open and constructive dialogue with us, and that we should maintain a proportionate oversight of suppliers and effective protections for consumers exist in the event of failure.

4.4. Under current rules, there are certain standards that suppliers must meet in regards to their own financial and operational monitoring and oversight.²² To assess performance and identify any areas of concern we use a targeted approach to identify suppliers we have concerns about, and our powers to request information from suppliers²³ to monitor their financial resilience. Our targeted approach is based on proxy indicators of financial risk, and aims to ensure we are as prepared as possible to respond to a supplier failure.

4.5. However, in carrying out our duties, particularly around supplier failures, we have experienced examples of suppliers that have had limited billing systems and processes in place, very poor data quality, and poor financial record-keeping. Some suppliers have not had the governance structure or plans in place needed to effectively protect consumers in the event of their failure. We think that this could be significantly improved, to the benefit of consumers, by introducing additional regulatory tools, including new reporting obligations to ensure compliance with the new rules.

4.6. At our June 2019 workshop, there was significant interest in Ofgem introducing more risk-based reporting on suppliers, allowing quicker identification and intervention when necessary. However, stakeholders were clear we should be mindful not to introduce monitoring for the sake of it. With this in mind, we have taken a proportionate view of what is necessary to provide assurance and, where relevant, explore this further in our accompanying impact assessment. We set out our proposals below.

Living wills

²² The vertically-integrated suppliers are required to publish annual statements segmenting the financial results of their supply and generation businesses: Ofgem, [Energy Companies' Consolidated Segmental Statements \(CSS\)](#), July 2019

²³ Condition 5 of the Electricity and Gas Supply Licence Conditions

4.7. Our May 2019 working paper set out our initial thinking on requiring suppliers to maintain a living will, setting out what would happen in the event of their failure, including any barriers to an orderly exit. This could include:

- Risks of consumers incurring costs.
- Risks of service disruption for its customers.
- How it would ensure compliance with any relevant licence conditions – including any new rules introduced under the Supplier Licensing Review, for example to protect against cost mutualisation.

4.8. The living will may also outline the practicalities if running a SoLR process is the only viable option under the circumstances. For example, it may outline methodology for the transfer of accurate data and plans for the continuation of services. It would not ask suppliers to evaluate the likelihood of failure.

Stakeholder views

4.9. Stakeholders were supportive of policies that address data quality issues during the SoLR process and interactions with the administrators. A significant number of stakeholders at our June workshop felt that living wills would form part of the package of reforms they thought should be introduced. On the whole, the improved market oversight package, in which the living will sits, generated a lot of stakeholder interest and enthusiasm. However, stakeholders questioned how effective a living will would be on its own – they were somewhat sceptical that it would help to improve the quality of data held by poor performing suppliers.

Our views and options

4.10. We share stakeholders' views of the importance of good data quality across the industry. We have seen examples of where poor data quality can cause disruption in the event of a supplier failure. Incomplete or incorrect data can have direct, negative consequences for consumers as, among other issues, the appointed supplier can have difficulty contacting consumers, establishing and returning credit balances and issuing first bills. We consider that while the living will by itself is unlikely to resolve these problems, it could play a helpful part of the solution. It would require suppliers to consider handover processes and potentially help to expose and remedy poor practices.

4.11. **Content of the living will:** There is a range of information that could be useful to a prospective incoming supplier were another supplier to fail. This could include things such as:

- An assessment of any barriers the supplier may face to an orderly market exit.
- Plans to mitigate the risk of excessive mutualisation of debts (including obligations under government environmental schemes such as the RO).
- Arrangements that would ensure continuity of services by key service providers.
- Sensible plans for the sale of assets (such as those tradable under the ECO scheme for licenced suppliers).
- Plans for engaging with Ofgem and industry central bodies during the wind down process.
- A methodology for the efficient handover of information to the relevant party.

4.12. **Scope of protection:** We considered whether it would be appropriate to require all suppliers to produce a living will, or whether it should only apply to suppliers above a certain size. We are aware that the materials outlining what an orderly exit looks like in the case of a large supplier are likely to look markedly different to a supplier with only a small number of customers. A comprehensive and clear living will could, in the case of a large supplier, be of enormous importance. We are also conscious that many of the suppliers that have failed recently have been at the smaller end of the market. We have also considered whether or not, in some cases, suppliers should be required to publicly disclose some or all of its living will to promote transparency and confidence in the market.

Our proposal

We propose to require all suppliers to maintain a living will and to make public some of the non-commercially sensitive information contained within it. Our draft impact assessment outlines that although this will result in higher costs for industry, there are benefits associated with increased market confidence we believe will be realised as a result of this.

We consider that introducing this requirement is likely to help support suppliers exiting the market to do so in an orderly way, and in doing so improve the experience of supplier failure from a customers' perspective. It should also reduce the burden on the incoming supplier.

We consider that this requirement should apply to all suppliers, though we expect each suppliers' living will to be proportionate to their scale. We have not yet decided the exact minimum information requirements that should be included. We will consider this in our next phase of work.

We would expect to allow a 1-2 month period after our decision for suppliers to implement this new requirement. We welcome feedback on the appropriateness of this timeframe.

Independent audits

4.13. It is a supplier's responsibility to comply with their regulatory obligations. As such, we generally do not consider it is our role to forensically analyse suppliers' operations and finances. However, in certain instances, independent verification of the root cause of problems in supplier operations and technical assessments of systems and financial information may be proportionate.

4.14. In our May working paper, we discussed introducing a requirement for suppliers to undertake independent audits where instructed by Ofgem. These audits could cover an assessment of a suppliers' financial status, as well as their customer service systems and processes. We suggested that we would take a proportionate and risk-based approach when requiring an audit, and that we would act on the information it uncovered.

4.15. The ability to compel audits would strengthen our ability to effectively oversee poor-performing suppliers. This would enable us to identify at an early stage where suppliers are in financial difficulty or may be at risk of failing to meet their customer service obligations. In so doing it would help to support our ability to identify and address instances of non-compliance and mitigate the potential for consumer harm.

Stakeholder views

4.16. Stakeholders at our June workshop were generally supportive of measures to increase our oversight of poor performing suppliers. A small number of stakeholders suggested that a requirement to enable us to compel suppliers to conduct independent audits could be a useful tool to be able to deploy in instances where there are concerns about a supplier's financial status or ability to effectively serve its customers. A majority of stakeholders strongly urged us to ensure that, if we introduced this requirement, it should only be used in exceptional circumstances.

Our views and options

4.17. We continue to believe that we should take steps to strengthen our ability to identify where suppliers may be in financial difficulties and at risk of failing to meet the needs of their

customers. We consider that the ability to require suppliers to conduct independent audits would help to support this aim. We share stakeholder views that this tool, if introduced, should be used in a proportionate way. We do not consider that we would make use of this requirement unless we had significant grounds for concern.

4.18. **Scope of audits:** We already gather and analyse a significant amount of information from suppliers relating to a wide range of regulatory obligations. If we introduce an independent audit requirement, we would not want to duplicate the monitoring we already conduct. With this in mind, it may be sensible to focus the scope of an audit requirement on areas where detailed, forensic analysis is required to uncover problems and their causes. This could mean that audits should be focused around supplier financial accounts, and customer service systems and processes.

4.19. **Ensuring audits are used in a proportionate way:** We do not envisage using an audit requirement to investigate every compliance issue. This is likely to be a disproportionate tool to use in many cases, and would place an undue regulatory burden on suppliers. We would expect to deploy the requirement sparingly. Circumstances in which we envisage it could be used include where:

- We have serious concerns about a supplier's financial resilience – the criteria we use to assess this are likely to be similar to those outlined in chapter 3 in relation to milestone assessments.
- We have reason to believe the supplier in question is preventing us from performing our statutory duties, for instance where we have doubts about the accuracy or completeness of a response to a request for information.
- Specific technical or financial expertise is required to identify the root cause of customer service failures.

4.20. **Who would conduct them:** To ensure that the findings of the audits are impartial and independent, it may be sensible to require that they be conducted by external parties not involved in the day-to-day operation of the supplier. Ofgem could conduct these audits – though we are not likely to have all of the necessary expertise in-house to do some of the technical and systems analysis that may be required. We could provide a shortlist of companies that suppliers could choose from, though this may rule out some of the smaller auditors and reduce suppliers' ability to find more cost-effective options. It may therefore be sensible to leave the choice of auditor up to suppliers, as long as they can demonstrate that the selected party has been independently accredited and meets relevant industry standards.

Our proposal

We propose to introduce a new requirement to enable us to compel suppliers to undertake an independent audit, conducted by an external auditor, of their financial accounts and customer service systems and processes. We consider this requirement would strengthen our ability to effectively oversee suppliers' activities, enable us to identify problems and to take action in a timely way. In doing so we consider this requirement would enable us to prevent or mitigate the potential for consumer harm associated with poor supplier practices.

We would seek to use this requirement in a proportionate way. We would use it only where we had significant concerns about a supplier's financial resilience or customer service arrangements, and where it is necessary to build on our own existing market.

We do not anticipate that any implementation period outside of the statutory 56 days would be required to implement this proposal.

General monitoring and reporting

4.21. We already take a risk-based approach to our monitoring and compliance activities. We would expect to apply this approach in the case of any new rules introduced as part of the Supplier Licensing Review. This would mean that we may conduct specific monitoring in relation to the new requirements we introduce. In certain cases, eg living wills, we may also require suppliers to publish or report certain information to us to demonstrate compliance with the new requirements.

4.22. In addition to general monitoring and reporting, we consider it may be beneficial to require suppliers to report to us where there has been a change of control of the business. This notification would enable us to engage with the new management and ensure that appropriate checks are conducted, for example fit and proper checks. This would help to ensure that significant changes in management at suppliers do not cause standards to slip and expose consumers to the risk of harm. We would expect there to be minimal burden for suppliers associated with this requirement.

Our proposal

We propose to adopt a risk-based approach to monitoring supplier compliance with new rules we introduce as part of the Supplier Licensing Review, and to require suppliers to report changes in control of the business to us.

5. Exit arrangements

Section summary

In this chapter, we set out proposals to minimise the disruption associated with supplier exit. We propose changes to certain customer contract terms to ensure administrators are subject to some of the same requirements as suppliers, and outline other work packages we may explore going forward.

Question 10: Do you agree with the near term steps we propose to take to improve consumers' experience of supplier failures? Are there other steps you think we should be taking?

Question 11: Do you think there is merit in taking forward further actions in relation to portfolio splitting or trade sales? What are your views of the benefits of these options? Are there any potential difficulties you can foresee?

5.1. In previous chapters we have set out the ongoing requirements we propose to introduce to reduce the likelihood and impact of supplier failures. In this chapter we outline certain changes that could help to minimise disruption for consumers when suppliers do fail.

5.2. We propose to require suppliers to include certain clauses in their contract terms and conditions to ensure that administrators of failed suppliers are subject to some of the same requirements as suppliers. At the end of the chapter we also outline areas where we are considering what further actions we could take, and where we would welcome stakeholder feedback.

What we aim to achieve

5.3. The current SoLR process has worked well in ensuring customers have continuous supplies of gas and electricity, while ensuring that domestic credit balances are protected. We are keen to make improvements to these arrangements, where doing so would improve the customer experience or reduce the burden on the incoming supplier. Where doing so does not require changes to licence conditions or regulatory obligations – eg where we can enhance the requests for information we make and the information packs provided to potential SoLRs – we intend to make changes in the short term.

5.4. There are also a number of relatively minor changes we consider we could make to current licence obligations that would improve consumers' experience where their supplier fails.²⁴ We set these changes out in the following sections.

Customer interactions with administrators

5.5. In the event of a supplier failing, an administrator will typically be appointed to manage the affairs of the failed energy supplier, with the aim of achieving the best outcome for the company's creditors. Depending on the circumstances, there can be a need for direct interactions between customers of the failed supplier and the company administrators. This is most prominently the case where the administrator retains the debt book of the failed supplier, and is responsible for final billing of customers.

5.6. In many cases, administrators have worked collaboratively with the appointed SoLR to deliver good outcomes for consumers. In some cases, however, we have been disappointed by the practices of some administrators in their dealings with energy consumers. Some of these practices have led to poor consumer experiences, involved significant delays in final billing, and aggressive chasing of debts.

5.7. We do not directly regulate administrators. However, where we have concerns about their practices we engage directly with the administrators to ensure they are treating customers fairly. To this end, we will shortly publish a document setting out our expectations of administrators. Where we have significant concerns we can make complaints to relevant financial services accreditation bodies and may engage in reputational regulation. We want to build on these existing approaches where we can, and ensure consumers have the ability to effectively push back on poor administrator practices.

Stakeholder views

5.8. In our June workshop, and in industry workshops since then, a number of suppliers have expressed concerns about administrator practices. They have suggested that appointed SoLRs can struggle to deliver the outcomes they want for consumers due to the practices of some administrators. They suggested that administrators should be subject to some of the

²⁴ The clarification in SLC 8 is included in Appendix 1.

same requirements as suppliers. However, they acknowledged that this may be practically difficult to achieve given the set of duties administrators have under insolvency legislation.

Our views and options

5.9. We share stakeholder views that administrator practices can have a significant bearing on consumers' experience of the SoLR process. While the majority of administrators have acted in a manner that enables a relatively quick and smooth conclusion to the SoLR process from consumer's point of view, this has not universally been the case. We want to take proportionate steps that may help to support better outcomes for consumers in their dealings with administrators.

5.10. We are particularly concerned about instances where administrators have aggressively chased debt. We are not convinced that administrators should have any greater rights than a licensed energy supplier in this regard. And we consider that consumers may benefit from a consistent approach when it comes to energy debt collection practices. For instance, suppliers must take all reasonable steps to send final bills within six weeks of the end of a supply contract. They must also take steps to understand whether a customer may struggle to pay a debt and to take this into account when calculating any payment instalments.

5.11. One proportionate way in which we may be able to provide some backstop protections for consumers would be to require that debt collection requirements that apply to suppliers are reflected in contract terms. This would give them concrete contractual terms to point too should the appointed administrator's practices fall short of what we would expect of a licensed supplier. Reflecting these requirements in contract terms may also be helpful to the consumer should there be a legal dispute with the administrator.

Our proposal

We propose to introduce a requirement for suppliers to include references in their contract terms and conditions that activities relating to debt recovery will be executed as outlined in relevant licence conditions.²⁵

²⁵ These conditions are electricity and gas supply licence conditions 27.5 – 27.8, and 28B.

Other improvements to exit arrangements

5.12. There are two areas further where we are considering whether there are additional actions we should take to improve the existing market exit arrangements. We welcome stakeholder views on these.

Portfolio splitting

5.13. Currently, when we run a SoLR process we appoint a single supplier to be the SoLR for that failed company. Customers are then switched from the failed supplier to the appointed SoLR by changing the Market Participant Identifier (MPID) in the central gas and electricity systems. This process facilitates a quick transfer of customers.

5.14. The current process does not, however, enable the customer portfolio of the failed supplier to be split between different SoLRs. This could be beneficial where different prospective SoLRs wish to make competitive bids for specific segments of the customer base – eg domestic or non-domestic only, prepay customers, smart metered customers, those with high or low volumes. It could also support the absorption of larger customer portfolios, if the numbers involved are difficult for a single bidder to accommodate.

5.15. To facilitate portfolio splitting would likely require multiple code and systems changes. We want to explore with industry how feasible these changes are. With this in mind we will shortly convene a workshop with Elexon, Xoserve and the DCC. We may then set up broader workshops to consider the relevant issues in detail.

Trade sales

5.16. In the event of supplier failure, our preference is for a commercial solution such as a trade sale to be found, in order to avoid regulatory intervention, eg in the form of a SoLR. We support consolidation and commercial transactions between suppliers as a means of minimising disruption for customers of a failing supplier, provided such transactions comply with relevant licence and consumer protection requirements. Such transactions can limit the wider impact of supplier failure, and avoid the need for a failed supplier's costs to be mutualised across the industry.

5.17. However, not all commercial transactions will result in a positive outcome for consumers. This may be because the customers directly affected experience poor outcomes, or because the transaction results in significant costs being imposed across the rest of the

market. There have been instances of partial-trade sales taking place just before failure, which has resulted in the SoLR selection process being less competitive.

5.18. We do not support transactions where there is a high likelihood that other suppliers and ultimately their customers will need to bear the costs 'left behind' by the gaining supplier. We also do not support commercial transactions that are likely to place a high administrative burden on other suppliers or act to undermine the effectiveness of a SoLR process.

5.19. We will judge each case on its merits, but we will take any instances of suppliers proceeding with commercial transactions that are contrary to consumers' interests very seriously, and look to take robust action. If the transaction is being considered at a very late stage (ie where a SoLR process is otherwise imminent) it is likely we will take action to proceed with the SoLR process if we consider that will better protect customers.

5.20. We could look to take other actions, such as requiring suppliers to obtain our approval before proceeding with customer book sales. We do not want to unduly interfere with commercial transactions between suppliers. However, neither do we want to expose consumers to the risk of harm where commercial transactions may not be in their interest or risk undermining the SoLR process' effectiveness. We would welcome stakeholders' views on whether we should further explore options related to supplier book sales.

Appendices

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Appendix 1: Proposed supply licence drafting

We are proposing to implement a number of new Gas and Electricity Supply Licence Conditions and one clarification. Unless specified, the proposals are for domestic and non-domestic suppliers. Below we include initial draft proposals of the following SLCs:

- New operational capability principle,
- New ongoing 'fit and proper' requirement,
- New principle to be open and cooperative with the regulator,
- New requirement to conduct independent audits when requested by the Authority,
- New requirement to report on change of control,
- A clarifying new principle to within SLC 8 Obligations under Last Resort Supply Direction to take all reasonable steps to honour the commitments made in their bid,
- *Domestic only*: A new requirement on suppliers to update Domestic Customer terms and conditions to include references that activities relating to debt recovery will be executed as outlined in SLCs 27.5-27.8 (inclusive) and 28B.

Operational capability

1.1 The licensee must ensure it has sufficient internal capability, processes and systems in place to enable the licensee to:

- a) serve each of its Customers, and
- b) comply with relevant legislative and regulatory obligations.

1.2. The licensee must ensure that it identifies, assesses and adequately manages any risks of non-compliance with 1.1.

The licensee must be able to demonstrate to the Authority (on request) compliance with 1.1 and 1.2.

Ongoing 'fit and proper' requirement

1.1 The licensee must not employ a person in a position of Significant Managerial Responsibility or Influence who is not a fit and proper person to occupy that role.

1.2 The licensee must have the processes, systems and governance in place to ensure that persons with Significant Managerial Responsibility or Influence are fit and proper to occupy that role. The licensee must carry out periodic assessments on such persons.

1.3 In complying with paragraphs 1.1 and 1.2, the licensee must have regard to whether the individual is of good character, and whether he or she has been responsible for,

contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity (or, providing a service elsewhere which, if provided in Great Britain, would be a regulated activity).

1.4 In complying with paragraphs 1.1 to 1.3, the licensee must have regard to and take account all relevant matters including, but not limited to, whether the individual has:

- a. Any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering;
- b. Any insolvency history, including undischarged bankruptcy, debt judgements and County Court judgements;
- c. Been disqualified from acting as a director of a company;
- d. Been a person with significant management responsibility or influence at a current or former Gas Supplier or Electricity Supplier which triggered a Supplier of Last Resort Event (including where they were a person with significant management responsibility or influence at that Gas Supplier or Electricity Supplier within the 12 months prior to the Supplier of Last Resort Event);
- e. Been refused, had revoked, restricted or terminated, any form of authorisation, or had any disciplinary, compliance or enforcement action taken by any regulatory body in any jurisdiction whether as an individual, or in relation to a business in which that person held significant management responsibility or influence;

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

1.6 The licensee must be able to demonstrate to the Authority (on request and at any time), compliance with 1.1-1.5.

Definitions for condition

1.7 In this condition:

Significant Managerial Responsibility or Influence means where a person plays a role in—

- (a) the making of decisions about how the whole or a substantial part of an undertaking's activities are to be managed or organised, or
- (b) the actual managing or organising of the whole or a substantial part of those activities.

Supplier of Last Resort Event means when a direction is issued by the Authority pursuant to standard condition 8 of either a gas supply licence granted under section 7A(1) of the Gas Act 1986(a) or an electricity supply licence granted under section 6(1)(d) of the Act;

(to be included in the Gas SLC) **Electricity Supplier** means any person who holds an electricity supply licence granted or treated as granted under section 6 of the Electricity Act 1989.

(to be included in the Electricity SLC) **Gas Supplier** means any person who holds a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.

Principle to be open and cooperative with the regulator

1.1 The licensee must be open and cooperative with the Authority.

1.2 The licensee must disclose to the Authority appropriately anything relating to the licensee of which the Authority would reasonably expect notice.

Independent audits

1.1 After receiving a request from the Authority to conduct an Independent Audit that it may reasonably require or that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must provide that Independent Audit to the Authority when and in the form requested.

1.2 The licensee is not required to comply with paragraph 1.1 if the licensee could not be compelled to produce or give the information in evidence in civil proceedings before a court.

Definitions for condition

1.3 In this condition:

Independent Audit means an audit carried out by a person other than the licensee or an Affiliate, instructed by the licensee, having received the Authority's prior, written approval in line with terms of reference supplied by the Authority.

Other reporting and notifications - Change of control

1.1 The licensee must notify the Authority of any change in any of the matters listed in 1.2, promptly and within a reasonable timescale.

1.2 The matters referred to in paragraph 1.1 are the following:

- The address of the licensee's registered office;
- The most appropriate email address at which the licensee can be contacted;

- Whether the licensee is an active supplier;
- Whether the licensee supplies any Non-Domestic Customer;
- Whether the licensee supplies any Domestic Customer;
- Whether a Relevant Merger Situation has arisen in respect of the licensee;
- Any Person with Significant Control in respect of the licensee;
- Whether the licensee supplies any Customers through a White Label Tariff,
- Any significant changes that may affect how a licensee operates.

Definitions for condition

1.3 In this condition:

Person with Significant Control has the same meaning as under section 790C of the Companies Act 2006.

Other improvements to exit arrangements

- 8.3 In complying with the Last Resort Supply Direction, the licensee must take all reasonable steps to honour any commitment made during the Supplier of Last Resort selection process, having special regard for including, but not limited, to:
- Appropriate resources and planning to how the licensee will on-board new Customers,
 - Appropriate planning to maintain and/or improve its customer service standards in anticipation of a significant increase in customer contacts, and
 - Communication plans ready for immediate deployment upon acquisition of the SoLR customers.

Customers in debt to the failing supplier

22F.1 The licensee must ensure that the terms and conditions of each Domestic Supply Contract or a Deemed Contract comply with the provisions of paragraphs 5 to 8 of standard condition 27 (inclusive) and paragraphs 5 and 6 of standard condition 28B.

Appendix 2: Consultation questions

Overarching question:

1. Do you think the proposed package of reforms will help to reduce the likelihood of disorderly market exits, and the disruption caused for consumers and the wider market when suppliers fail? Are there other actions you consider we should take to help achieve these aims?

Questions for the impact assessment:

2. Do you agree with the outputs of our impact assessment?
3. What further quantitative data can industry provide to inform the costs and benefits of the impact assessment, particularly for cost mutualisation protections?
4. Do you agree with the assumptions used to calculate the costs and benefits in our impact assessment? If not, please provide evidence to support further refinement.

Promoting better risk management:

5. Do you agree with our proposed option to cost mutualisation protections? Are there other methods of implementing this proposed option? Please provide an explanation and, if possible any evidence, to support your position.
6. Do you agree with our proposal to introduce new milestone assessments for suppliers? Do you think the milestones we have proposed and the factors we intend to assess are the right ones? Are there additional factors we should consider to help us to identify where suppliers' may be in financial difficulty?

More responsible governance and increased accountability:

7. Do you agree with our proposal to introduce an ongoing fit and proper requirement? Are there additional factors, other than the ones we have outlined, that you believe suppliers should assess in conducting checks?

Increased market oversight:

8. Do you agree with our proposal to require suppliers to produce living wills? What do you think we should include as minimum criteria for living will content?
9. Do you agree with our proposed scope for independent audits? Please provide rationale to support your view.

Exit arrangements:

10. Do you agree with the near terms steps we propose to take to improve consumers' experience of supplier failures? Are there other steps you think we should be taking?
11. Do you think there is merit in taking forward further actions in relation to portfolio splitting or trade sales? What are your views of the benefits of these steps? Are there any potential difficulties you can foresee?

Appendix 1

12. Do you think our draft supply licence conditions reflect policy intent?

Appendix 3: Background information on cost mutualisation mechanisms

In this Appendix, we have included some background information on the operation of mutualisation mechanisms within different government schemes.

Certain government schemes have mechanisms to spread the cost of unrecovered amounts across the wider industry:

The Renewables Obligation (RO) scheme²⁶: RO costs are divided between electricity suppliers based on their individual supply volume. Where there is a shortfall in the recovery of costs, for instance because a supplier fails without presenting the required number of RO certificates or making a payment under the 'buy out' mechanism, mutualisation may be triggered²⁷, requiring all other suppliers to make future payments to make up this shortfall.

The Feed-in Tariff (FIT) scheme²⁸: Similar to the RO scheme, where unpaid amounts under the FIT scheme reach a certain level there is a mutualisation process to account for scheme shortfalls.

The Warm Home Discount (WHD) scheme²⁹: Under the WHD scheme obligated suppliers must, among other matters, provide a £140 annual electricity rebate to those eligible for the core group (older fuel poor customers) at risk of fuel poverty. If a scheme supplier fails to make a core group reconciliation payment, costs are mutualised whereby other scheme suppliers make up the shortfall, based on their market share.

Other mutualisation mechanisms:

Alongside a mutualisation mechanism for domestic customer credit balances, there are other mutualisation mechanisms in the industry. These are referenced below.

Capacity Market: There is a mutualisation mechanism in the Capacity Market rules.³⁰ Suppliers must ensure that they have sufficient credit cover in place prior to the start of each

²⁶ Ofgem, [Renewables Obligation \(RO\) scheme](#)

²⁷ Mutualisation is only triggered where the shortfall reaches a certain level.

²⁸ Ofgem, [Feed-in Tariffs \(FIT\)](#)

²⁹ Ofgem, [Warm Home Discount \(WHD\) scheme](#)

³⁰ Ofgem, [Capacity Market \(CM\) rules](#)

month of the delivery year.³¹ Suppliers with insufficient credit cover will be in default and their outstanding charges will be mutualised between non-defaulting suppliers.³²

Other industry mechanisms: There are credit arrangements in place for industry costs such as balancing, including collateral requirements and mutualisation mechanisms in the event of a shortfall. The approach and associated risks differ between gas and electricity markets. For electricity, suppliers are responsible for their own balancing and subject to credit requirements outlined in the Balancing and Settlement Code, while for gas, a shipper can take on obligations for multiple suppliers as set out in the Uniform Network Code.

These arrangements are outside the scope of this review, however they do in part aim to mitigate impacts of supplier failure. They may also influence the risks of failure, either directly through the obligations placed on suppliers or indirectly through contagion risks. Stakeholders may seek to raise modifications to the codes should they believe that change in this area would be beneficial.

³¹ Credit cover here covers only the Capacity Market Supplier Charge (CMSC). CMSC are monthly payments to cover capacity payments to capacity providers for their commitment to meet their capacity obligation during a delivery year.

³² CM Payment Regulations are administered by the Electricity Settlements Company. For more information, please visit the [ESC website](#).

Appendix 4: Your response, data and confidentiality

Your response, data and confidentiality

You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you do wish to be kept confidential and those that you do not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.

If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

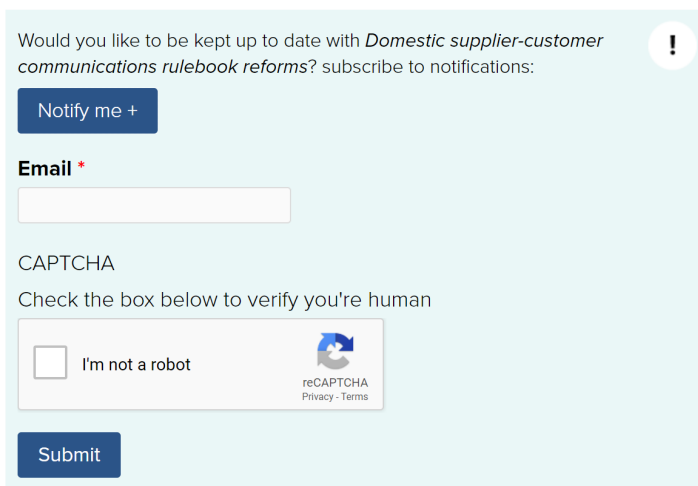
Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations).

Notifications




Would you like to be kept up to date with *Domestic supplier-customer communications rulebook reforms*? subscribe to notifications: !

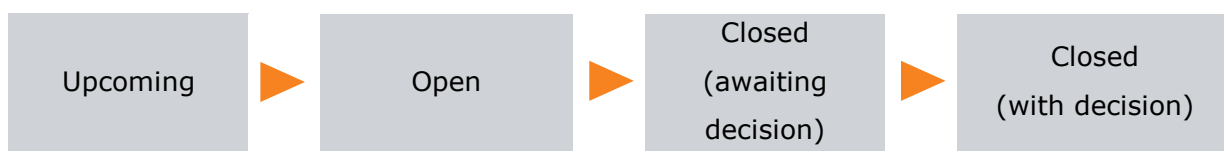
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Check the box below to verify you're human

I'm not a robot  reCAPTCHA
Privacy - Terms

Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:



Appendix 5: Privacy notice on consultations

Personal data

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

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

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

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

2. Why we are collecting your personal data

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

3. Our legal basis for processing your personal data

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

3. With whom we will be sharing your personal data

We do not anticipate to share your data outside of Ofgem.

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

Your personal data will be held for the duration of the Supplier Licensing Review and for a period afterwards sufficient to cover legal appeals that may be made.

5. Your rights

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

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete

- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

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

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

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

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