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Decision

Supplier Licensing Review: Ongoing requirements and exit arrangements - Decision

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This document outlines our decision to introduce a package of measures to improve supplier standards of financial resilience and customer service. Our decision follows extensive stakeholder engagement over the past two years. The majority of reforms are largely unchanged from those we proposed in our statutory consultation in June 2020.

This document outlines the reasons for our decision to modify the relevant supply licence conditions. The majority of the new licence conditions licence changes will take effect on and from 22 January 2021.

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Executive summary

This document notifies stakeholders of our decision to modify the electricity and gas supply licences to reflect changes to ongoing requirements and exit arrangements for suppliers. The changes are designed to strengthen our regulatory regime, drive up standards among energy suppliers and minimise industry and consumer exposure to financial risks and poor customer service.

These reforms are part of our move to improve customer service standards and minimise the likelihood and impact of disorderly supplier failure. The measures we are introducing are designed to (i) promote more responsible risk management, (ii) improve governance and increase accountability, and (iii) enhance our market oversight. These changes build upon our enhanced entry requirements introduced in July 2019.

Our decision follows extensive stakeholder engagement over the last year. We have carefully considered the responses to our June 2020 statutory consultation and decided to proceed with the package of proposals, with some minor changes to clarify policy intent. These policies will come into effect from 22 January 2021, with the exception of Customer Supply Continuity Plans, which will come into effect on 18 March 2021. In addition to introducing this package of reforms, we will be consulting early next year on what further measures may be needed to provide additional protections to reduce the level and risk of cost mutualisation in the event of supplier failure.

The modification notices accompanying this document include a list of all the changes we have made following our statutory consultation proposals. Appendix 1 to this document provides an overview of stakeholder responses to the statutory consultation and outlines the rationale for our final decision in each policy area. Stakeholders were generally supportive of our proposals, with most comments focusing on additional clarification that could be brought to the drafting of the new licence conditions.

We have also published guidance to accompany two of our proposals, the Financial Responsibility principle (for which we are requesting feedback) and milestone assessments, alongside this document.

Policies reflected in the modification notices

Our final proposals contain a number of measures that work together as a package to drive up standards across the energy retail sector. The proposals are outlined below:

1. **Promoting more responsible risk management:** we are introducing a set of measures intended to ensure that suppliers are prepared for growth and to meet their regulatory obligations. These are:
    - A new principles-based requirement for suppliers to take action to minimise costs that could be mutualised in future. This will require suppliers to make sure that they are managing their finances effectively and actively managing the risk of leaving costs to be mutualised in the event of their failure. The principle will ensure that Ofgem is able to take timely action where suppliers are not managing this risk effectively. We are also considering the case for further, more prescriptive requirements around credit balances and environmental obligations, and will consult on this early next year.
    - New checkpoints for suppliers, determined by customer numbers and financial and compliance indicators, at which Ofgem will scrutinise suppliers' readiness for growth and ability to meet their regulatory obligations. We may impose additional restrictions on individual suppliers, for example a restriction on them taking on new customers, if we think they are not ready for growth or able to meet their regulatory obligations.
    - A new principles-based requirement to ensure suppliers have sufficient operational capability and adopt overall effective risk management practices.

2. **Improved governance and increased accountability:** our remedies aim to increase accountability, and incentivise responsible and appropriate behaviour from those in senior positions. We are introducing:
    - A requirement for suppliers to ensure that relevant individuals with significant influence in the business are fit and proper to occupy their role (in line with criteria for being awarded a licence at entry).
    - A new principles-based requirement for suppliers to be open and cooperative with the regulator.

3. **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 where appropriate. We are introducing new requirements for suppliers to:
    - Undertake, at Ofgem's request, an independent audit of their financial position and/or customer service systems and processes.

- Maintain "Customer Supply Continuity Plans" (formerly known as Living Wills), so that their customers are protected and wider market impacts are minimised, should they exit the market.
- Report changes in control of the business to us promptly.

4. **Final proposals for exit arrangements:** where suppliers do fail, to ensure that consumers experience minimal disruption, we are introducing new rules that will:
    - Better reflect that the same standards that apply to suppliers also apply to administrators where they assume responsibility for a failed supplier's debt book.
    - Require suppliers to notify Ofgem if they are engaging in a customer book sale, and strengthen our ability to ensure such transactions do not cause harm to consumers.

The majority of the changes set out in the modification notices published alongside this document will take effect on and from **22 January 2021** with the exception of Customer Supply Continuity Plans, which will come into effect on 18 March 2021. We will be consulting early next year on what further measures may be needed to provide additional protections to reduce the likelihood and scale of cost mutualisation in the event of supplier failure.

1. Introduction

1.1. This document outlines our[1] decision to introduce modifications to the electricity and gas supply licences to reflect changes to ongoing and exit arrangements under the Supplier Licensing Review ('SLR').

1.2. There are four overarching themes that have informed our policy development as part of the Supplier Licensing Review. 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 have proportionate oversight of suppliers, and there should be effective protections for consumers in the event of supplier failure; and
- Ofgem's licensing regime should facilitate effective competition and enable innovation.

1.3. Our package of reforms has been designed to enable us to take action where we see poor supplier practice, without placing undue burden on the majority of suppliers that are already operating in a responsible manner. For those suppliers that are already operating in a well-governed, consumer-focused way, implementing the new requirements may require only limited changes. We expect that the reforms, combined with the new entry requirements that came into effect in July 2019, will drive up standards and enhance our ability to address poor practice in a proportionate manner.

1.4. The reforms are intended to function together as a package. For instance, we consider that policies to strengthen ongoing requirements are likely to reduce the need for additional rules around exit arrangements. Each individual policy measure should have a positive impact and, taken together as a whole, we consider that the package should effectively protect consumers from the harmful effects associated with disorderly supplier market exits.

[1] The terms "we", "us", "our", "Ofgem" and "the "Authority" are used interchangeably in this document and refer to the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

1.5. We received 31 responses to our June 2020 statutory consultation.[2] We have carefully considered and taken into account stakeholders' views. In this document, we outline the reasons for the decisions we have taken and their intended effect. For the sake of brevity, we have not sought to repeat entirely the rationale and evidence base set out in our October 2019 policy consultation and June 2020 statutory consultation but instead refer to these documents where necessary.

Structure of this document

1.6. This document is structured as follows:

- Chapter 2 outlines our licence modifications to promote **more responsible risk management among suppliers**
- Chapter 3 sets out our licence modifications to improve **supplier governance and accountability**
- Chapter 4 outlines the steps we have taken to ensure we have **effective market oversight and monitoring**
- Chapter 5 covers our licence modifications to reduce the disruption associated with supplier **market exits**
- Appendix 1 to this document sets out in more detail our response to issues raised by stakeholders
- Appendix 2 to this document outlines stakeholder responses we received in relation to our milestone assessment guidance document
- Appendix 3 to this document provides our draft guidance for our Financial Responsbility Principle

1.7. Alongside this document, we have published:

- Notices of our modifications
- Guidance for our Milestone Assessments

[2] Ofgem, Statutory Consultation – Supplier Licensing Review: Ongoing requirements and exit arrangements, 25 June 2020

2. Promoting better risk management

Section summary

The consequences of a supplier's poor risk management are ultimately felt by consumers. We have decided to put in place measures to reduce the need to mutualise costs in the event of supplier failure, require suppliers to ensure they are set up to effectively discharge their obligations, and introduce new checks at key milestones and trigger points.

2.1. In this chapter, we outline our decision to introduce measures to promote better risk management among suppliers. We summarise stakeholder views on the policy and proposed licence drafting, and any changes we have made since our statutory consultation. The new licence conditions cover:

- **Cost mutualisation protection**: a new principles-based requirement for suppliers to take actions that mitigate the extent of costs to be mutualised in the event of their failure.
- **Operational capacity and capability**: a new principles-based requirement for suppliers to have sufficient operational capability to effectively serve their customers and adopt appropriate risk management practices.
- **Milestone assessments**: new checkpoints, determined by customer numbers and financial and compliance indicators, at which we would scrutinise suppliers.

Financial Responsibility Principle

2.2. We are introducing a new principle to drive all suppliers in the domestic and non-domestic sectors towards responsible behaviours that minimise the extent of costs to be mutualised in the event of failure. The Financial Responsibility Principle will act as an over-arching obligation – supporting one of the key aims of the Supplier Licensing Review by ensuring suppliers act in a more financially responsible manner and take steps to bear an appropriate share of their risk.

Stakeholder feedback

2.3. There was strong support across stakeholders that action needs to be taken to address the risks of cost mutualisation, and support in general for the proposed new

principle. However, a number of stakeholders argued that we should to go further and questioned the effectiveness of the principle without supporting prescriptive measures. They requested that we continue to develop the case for prescription. Two stakeholders did not support the principle and questioned whether it would be effective in minimising the mutualisation of costs.

2.4. We received only a few comments specifically on the proposed drafting of the Financial Responsibility Principle. One stakeholder suggested we include in the licence drafting the minimum actions for compliance that we listed in the consultation.

2.5. Another was concerned that the wording in the draft licence condition would obligate suppliers to comply with guidance and that this guidance could be subject to change. They were concerned this gives Ofgem the power to change its approach to enforcing compliance without due process and thorough consultation with industry. One stakeholder was concerned that the proposed drafting requires suppliers to actively reduce costs that might not be within their direct control.

Changes we have made to the draft licence condition

2.6. We have carefully considered responses and have decided to retain our original drafting of the licence condition. We would not expect a supplier to reduce costs that are not within its control – the licence conditions includes the word "appropriate" to acknowledge that suppliers will not have the ability to reduce all costs. This should address any concerns that a supplier might be expected to actively reduce costs not within their direct control.

2.7. We recognise the benefits of including the minimum requirements in the licence in terms of the certainty this would provide for suppliers. However, we think this could be restrictive. Instead, setting these out in guidance will provide information to support suppliers in identifying appropriate actions to take, and allow flexibility for this guidance to change or evolve over time, if needed. We are also concerned that specifying our minimum expectations in the licence may mean those expectations are not seen as minimum standards but as targets. This could mean there is less incentive for suppliers to review and improve their approach to managing costs over time.

2.8. Obligating suppliers to comply with guidance on a licence condition is a common approach. The licence condition will set out that we will consult on the guidance we publish and any changes to that guidance. We are consulting upon guidance alongside this

decision document, and welcome stakeholder views on the guidance document by 22 January 2021. Separately, we are continuing to develop our thinking on further prescriptive measures – we provide an update on this work below.

2.9. We have made some drafting improvements to the definition of credit balances.[3] This is to better reflect our policy intent and also to ensure the use of this definition is not limited across the rest of the licence.

2.10. The final wording of the new Financial Responsibility principle is as follows.

Condition 4B. Financial Responsibility Principle

4B.1 *The licensee shall at all times manage responsibly costs that could be Mutualised and take appropriate action to minimise such costs.*

Meeting the financial responsibility principle

4B.2 *The licensee shall at all times have adequate financial arrangements in place to meet its costs at risk of being Mutualised.*

Guidance

4B.3 *The licensee must have regard to any guidance on standard condition 4B.1 (including in respect of definitions which appear in standard condition 1) which, following consultation, the Authority may issue and may from time to time revise.*

Condition 1. Definitions for condition

"Mutualised" means one or more market participants other than the licensee bearing costs incurred by the licensee, which may include Customer Credit Balances and costs incurred by the licensee under government environmental and social schemes, by virtue of regulatory mechanisms.

[3] Previously customer credit balances was the meaning given in standard condition 9.

> *"Customer Credit Balances" means the amount by which any payment made by the Customer to the licensee under or in accordance with the relevant Domestic Supply Contract and/or Non-Domestic Supply Contract which exceeds the total amount of Charge which is due and payable by the Customer to the licensee under that Domestic Supply Contracts and/or Non-Domestic Supply Contracts minus any amount refunded to the Customer.*

Further cost mutualisation protections

2.11. As set out above, the Financial Responsibility Principle will act as an over-arching obligation supporting one of the key aims of the Supplier Licensing Review by ensuring suppliers act in a more financially responsible manner and begin to take steps to bear an appropriate share of their risk.

2.12. The new principle will enable us to take action at an earlier stage where suppliers are behaving in a financially irresponsible manner. However, it may not, by itself, provide sufficient certainty that suppliers have in place appropriate protections to prevent the need for cost mutualisation in the event of their failure. It is therefore important to explore the case for introducing binding conditions to further reduce the likelihood and scale of cost mutualisation.

2.13. Therefore, in the next phase of our work, we will focus on whether more prescriptive cost mutualisation protections are required, in particular to minimise the risk and level of mutualisation of:

i. the costs of protecting **customer credit balances** when a supplier fails, and
ii. **Renewables Obligation (RO)** costs that fall to other suppliers when a supplier fails to meet its obligations.

2.14. On the second of these, we note that BEIS have recently announced their intention to consult on a proposal to raise the threshold at which RO costs are mutualised. This is a positive change which should reduce the level of costs that fall to other suppliers. In addition to this change, there are further potential protections we could introduce through new licence requirements on suppliers. An alternative approach could be to change the way the scheme itself operates (for example, to move to more frequent, as opposed to annual, compliance). Either approach raises complex issues which would need to be very carefully considered – and any changes to the scheme itself would not be straightforward

and would require legislation. We are working closely with BEIS to consider all options in the round, and identify what the most appropriate approach may be to progressing work on potential further protections in relation to RO costs.

2.15. In parallel, we will continue to progress our work on credit balance cost mutualisation protections, and our current view is that any additional measures in relation to these costs could be introduced in shorter timescales. We expect to consult early next year on what further cost mutualisation protections may be appropriate.

Operational capability principle

2.16. We are introducing a new principle for suppliers to ensure they have, and can demonstrate that they have, the capability, systems and processes in place to enable them to effectively serve their customers and comply with their regulatory obligations. The aim of the operational capability principle is to ensure that suppliers have the appropriate systems and processes to provide a quality service to their customers, meet their regulatory obligations and bear an appropriate share of their risk.

Stakeholder feedback

2.17. The majority of respondents were generally supportive of the operational capability principle and its aims, although several felt that it duplicates existing licence conditions. Most respondents did not comment on the licence condition drafting. However, one respondent felt that drafting did not mirror policy intent as it is not specifically targeted at those at risk of failing and mutualising costs. They suggested amending the drafting of the operational capability principle to reflect this.

2.18. Another respondent suggested that the wording 'comply with relevant legislative and regulatory obligations' was too broad in scope and would potentially provide Ofgem with regulatory powers over rules subject to the jurisdiction of other regulatory bodies. A third respondent questioned whether there should be specific mechanisms to gather feedback from Code bodies to ensure information is shared with Ofgem in a timely manner.

Changes we have made to the draft licence condition

2.19. We have carefully considered responses and have decided to retain our original drafting of the licence condition. We do not agree that the principle should be narrower in scope, although our monitoring and compliance activity would be risk-based. The principle

applies to all suppliers, and should provide comprehensive protections. The drafting reinforces our ability to take swift action early to address situations in which suppliers' operational capability is insufficient to serve their customers or meet their regulatory obligations, even before there is a significant or imminent risk of mutualised costs.

2.20. We also do not agree that the wording 'comply with relevant legislative and regulatory obligations' is too broad in scope as it only applies to 'relevant' legislative and regulatory obligations. Ofgem would not be able to take action over rules outside its jurisdiction or statutory duties. We agree that it is important that we identify possible issues with suppliers' operational capabilities early and will consider as part of our monitoring strategy how and from whom we can best obtain the information. However, we do not believe that this should be included in the Operational Capability Principle licence condition drafting.

2.21. The final wording of the new Operational Capability Principle is as follows.

Condition 4A. Operational Capability Principle

4A.1 *The licensee must ensure it has and maintains robust internal capability, systems and processes to enable the licensee to:*

a) efficiently and effectively serve each of its Customers;

b) efficiently and effectively identify likely risks of consumer harm and to mitigate any such risks; and

c) comply with relevant legislative and regulatory obligations.

Milestone assessments

2.22. We are introducing a requirement for suppliers to notify Ofgem when they reach their first 50,000 domestic customers and when they reach their first 200,000 domestic customers, for the purpose of undergoing the relevant milestone assessment.

2.23. The purpose of milestone assessments is to ensure that suppliers are adequately prepared and resourced to serve their customers, and to meet additional regulatory and statutory obligations, as they grow. We are complementing this requirement by introducing dynamic assessments, which we may conduct where we have concerns about

a supplier's financial stability or its ability to serve its customers. Milestone and dynamic assessments aim to promote better risk management, mitigating the risk of poor customer service and reducing the likelihood of failure.

Stakeholder feedback

2.24. The vast majority of respondents were supportive of both milestone assessments and dynamic assessments. In terms of the milestone assessments licence drafting, a couple of respondents questioned why there is a need for suppliers to notify Ofgem twice for each threshold (both a reasonable time before they anticipate reaching the threshold and when the threshold is reached).

2.25. One respondent said that the wording of 'reasonable time' in the proposed licence conditions were not clear and should be explained or a specific timescale specified. They also said that Ofgem should consider making the licence condition wording more flexible to allow for future changes. They suggested that the licence conditions could refer to social and environmental obligations rather than customer numbers, which would take account of any subsequent change or additional obligations.

Changes we have made to the draft licence condition

2.26. We agree with the respondents who questioned the benefit of having two notification points for each threshold. We have decided to remove the first of these threshold notification points, so that suppliers will only have to notify Ofgem once they reach their first 50,000 or 200,000 domestic customers and not before. We do not agree that the licence condition wording should be more flexible to account for changing obligation thresholds, as we do not agree that the milestone assessment thresholds should necessarily tie to existing thresholds.

2.27. Based on stakeholders' feedback, we have made one change to the drafting of the milestone assessments licence condition from the statutory consultation. We have:

- Removed the proposed requirement for suppliers to notify Ofgem a reasonable time before they anticipate reaching their first 50,000 and first 200,000 domestic customers.

2.28. The final wording of the new milestone assessments licence condition is as follows:

Condition 28C. Milestone Assessments

28C.1 *The licensee must notify the Authority, in writing, when it reaches its first 50,000 Domestic Customers for the purpose of undergoing the relevant milestone assessment.*

28C.2 *The licensee must notify the Authority, in writing, when it reaches its first 200,000 Domestic Customers for the purpose of undergoing the relevant milestone assessment.*

28C.3 *The licensee must have regard to any guidance on standard condition 28C (including in respect of definitions which appear in standard condition 1) which, following consultation, the Authority may issue and may from time to time revise.*

3. More responsible governance and increased accountability

Section summary

We are introducing two new requirements to mitigate the risk of poor supplier behaviour causing detriment to consumers and the energy market. They are an ongoing 'fit and proper' requirement and a principle to be open and cooperative with the regulator. The new rules aim to promote more responsible governance and increase accountability among suppliers' senior managers.

3.1. In this chapter, we outline the proposals we consider will best promote more responsible governance and accountability among suppliers. We are introducing new licence requirements for suppliers to:

- assess whether individuals with significant managerial responsibility or influence in their business are fit and proper for their role, and
- be open and cooperative with the regulator.

Ongoing fit and proper requirements

3.2. We are introducing a new licence condition where suppliers must have robust systems, process and governance in place to ensure relevant individuals holding a position of Significant Managerial Responsibility or Influence (SMRI) are fit and proper to occupy that role. Where suppliers have determined relevant individuals do not meet this criteria, they must not appoint them to senior positions without appropriate mitigations in place. Suppliers would be responsible for undertaking appropriate ongoing assessments to ensure that these individuals continue to be fit and proper to occupy their role.

3.3. This requirement intends to promote responsible governance, strengthen individual accountability and, as result, help to mitigate the risks of detriment to consumers by ensuring those in relevant senior positions are fit and proper to operate in the market.

Stakeholder feedback

3.4. Most respondents were generally supportive of an ongoing fit and proper requirement and its aims, though a very small minority felt the licence drafting was duplicative of existing regulations. Some respondents thought the definition for Significant

Managerial Responsibility or Influence (SMRI) was too broad and could potentially lead to a disproportionate number of staff being captured within the scope. Some stakeholders raised concerns about the prescriptive elements of the licence condition drafting. They argued that the wording of the licence condition may discourage suppliers from appointing experienced individuals who may have been connected to past supplier failure. They also suggested the policy could lead to individuals being unwilling to take senior posts at smaller or troubled suppliers for fear of negatively impacting their career prospects.

Changes we made to the draft licence condition

3.5. We have carefully considered responses, and have decided to retain our existing definition for SMRI. We appreciate that suppliers may adopt different internal governance structures. However, we do not expect an excessive number of senior-level individuals to fall within the scope of this requirement. We also do not consider the new requirement would discourage fit and proper individuals from working in the energy sector. Rather, the drafting would ensure suppliers carry out due diligence checks when appointing relevant individuals in senior positions, which we anticipate many already do.

3.6. When assessing individuals, suppliers should evaluate the relevance and impact of any findings and be pragmatic in their judgement. Suppliers should take into account the nature of role in question and the potential for harm to result for consumers should it not be properly discharged. We expect suppliers to determine, where necessary, the mitigating actions they would take to minimise the risk that individuals with significant influence may potentially cause or contribute to future customer harm. For instance, they may also wish to consider putting controls in place to clarify or limit the scope of relevant individuals' influence or decision-making ability.

3.7. We expect that many suppliers are already acting in line with our proposed new requirement. For those that are not, the new rule will ensure they put appropriate measures in place, while providing us with the ability to take action, if necessary, where they do not. In formalising these expectations, we consider the fit and proper requirement, along with the other new rules under the Supplier Licensing Review, supports Ofgem's principal objective of protecting the interests of existing and future energy consumers.

3.8. We have made one change to the drafting of the fit and proper licence condition from the statutory consultation. We have:

- Replaced the words "an individual" to "a person" to ensure that legal as well as natural persons are covered by the scope of the condition

3.9. The final wording of the new Ongoing Fit and Proper requirement licence condition is as follows.

Condition 4C . Ongoing fit and proper requirement

4C.1 *The licensee must not appoint or have in place a person in a position of Significant Managerial Responsibility or Influence who is not a fit and proper person to occupy that role.*

4C.2 *The licensee must:*

a) have and maintain robust processes, systems and governance in place to ensure that any person holding a position of Significant Managerial Responsibility or Influence in the licensee is fit and proper to occupy that role; and

b) carry out regular assessments on such person(s) to ensure that they remain fit and proper to occupy that role.

4C.3 *In complying with paragraphs 4C.1 to 4C.2, the licensee must have regard to and take account of all relevant matters including, but not limited to, whether the individual has:*

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

b. any relevant unspent criminal convictions in any jurisdiction in particular fraud or money laundering;

c. any insolvency history, including undischarged bankruptcy, debt judgements and County Court judgements;

d. been disqualified from acting as a director of a company;

e. been a person with Significant Managerial Responsibility or Influence at a current or former licensed Gas Supplier or Electricity Supplier in respect of whose Customers' premises the Authority issued a Last Resort Supply Direction (including where they were a person with Significant Managerial Responsibility or Influence at that licensed Gas Supplier or Electricity Supplier within the 12 months prior to the Last Resort Supply Direction being issued);

f. been refused, had revoked, restricted or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body in any jurisdiction whether as an individual, or in relation to a business in which that person held Significant Managerial Responsibility or Influence.

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

Condition 1 – Definitions for 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 a licensee's activities are to be managed or organised, or

(b) the actual managing or organising of the whole or a substantial part of those activities.

Principle to be open and cooperative with the regulator

3.10. We are introducing a new principles-based requirement for suppliers to be open and cooperative with Ofgem. The purpose of this requirement is to ensure suppliers engage in a constructive dialogue with Ofgem on an ongoing basis. It also aims to incentivise proactive and early engagement where a supplier is experiencing compliance issues, financial difficulty, or where its action or inaction may cause consumer detriment.

Stakeholder feedback

3.11. The majority of stakeholders were generally supportive of the open and cooperative principle, though some were concerned the licence condition drafting was too broad in scope. They felt the language used was open to interpretation and would therefore lead to inconsistent application. A small minority considered this policy was duplicative of existing requirements.

3.12. One respondent felt that the licence condition drafting does not mirror Ofgem's policy intent, as it is not specifically targeted at those at risk of failing and mutualising costs. Another felt the principle may be ineffective in instances where a supplier is showing signs of potential failure and may choose to prioritise rescuing their business over avoiding potential enforcement action.

Changes we have made to the draft licence condition

3.13. We have carefully considered responses, but we do not agree that the principle should be narrower in scope. While we do not intend to prescribe the subject matter on which suppliers should engage with the regulator, we do expect suppliers to ensure that they exercise sound judgement in determining the developments or changes about which we might expect to be informed. Generally, suppliers should be proactive in flagging any events or circumstances that could increase the risks of adverse consumer impacts.

3.14. The requirement does not solely target suppliers who may be at risk of failure. Rather, the licence condition makes explicit our expectations that suppliers work cooperatively with the regulator to identify risk of potential consumer detriment in a timely manner. This rule would also enhance our ability to oversee issues, address potential consumer detriment more effectively, and help minimise disruption for consumers, including where suppliers are experiencing or likely to experience financial difficulties.

3.15. The final wording of the new open and cooperative principle is as follows.

Condition 5A. Principle to be open and cooperative

5A.1 *The licensee must be open and cooperative with the Authority.*

5A.2 *In complying with paragraph 5A.1, the licensee must disclose to the Authority in writing or orally any circumstance relating to the licensee of which the Authority would reasonably expect notice in order to perform its statutory functions, particularly actions or omissions that give rise to a likelihood of detriment to Domestic Customers. Such disclosure should be given as soon as the circumstance arises or the licensee becomes aware of it.*

5A.3 *The licensee is not required to comply with paragraphs 5A.1 and 5A.2 if the licensee could not be compelled to produce or give the information in evidence in civil proceedings before a court.*

4. Increased market oversight

Section summary

As part of our increased market oversight plans, we are requiring all suppliers to produce a Customer Supply Continuity Plan and are giving ourselves the ability to require suppliers to undertake independent audits in some circumstances. Suppliers will also have to notify us of any changes of control of the company. These changes will allow us to mitigate the impacts of supplier failure on the market and for consumers.

4.1. In this chapter, we outline our specific plans to increase our market oversight. We are introducing new rules that:

- require suppliers to produce a Customer Supply Continuity Plan setting out clear terms for their orderly market exit,
- allow Ofgem to require suppliers to undertake Independent Audits in certain circumstances, and
- require suppliers to notify Ofgem when there are changes of control of the company and ensure proportionate reporting requirements are in place.

Customer Supply Continuity Plans (formerly 'Living Wills')

4.2. We are introducing a new licence condition that requires all suppliers to produce and maintain a Customer Supply Continuity Plan ("CSCP"), which sets out the supplier's strategy for safeguarding the continuity of supply for its customers in the event of its exit from the market. In complying with this condition, the plans should reflect the size and complexity of the suppliers' businesses, and they should be produced with appropriate governance and oversight from senior management. A supplier will be required to submit its CSCP when requested by Ofgem, including as part of the new Milestone Assessments and Dynamic Assessments.

4.3. The purpose of the CSCP policy is to improve the experience of supplier failure from a customer's perspective. In combination with our new Financial Responsibility principle, this should lead to outcomes where suppliers will be better prepared for market exit, and also where the right information will be readily accessible to an incoming supplier should a Supplier of Last Resort (SoLR) event be necessary. These outcomes will allow Ofgem to better assess whether appropriate arrangements are in place to facilitate a smooth

market exit, should that be required. To be clear, we do not view the CSCP as something to be produced at or near the point of market exit – our aim is to ensure that suppliers carefully consider what arrangements would be needed to ensure an efficient exit well ahead of these arrangements ever being required in practice. This will enable us to take early corrective action where plans are inadequate.

Stakeholder feedback

4.4. There was a mixed response to the CSCPs policy, though most respondents welcomed the additional information that was provided as part of our statutory consultation. Several stakeholders who were supportive of the policy thought it should play a helpful role in mitigating the negative effects of supplier failures on consumers and the market.

4.5. Some stakeholders stated that they would like to narrow the scope of the proposal, and to see the CSCPs only used as part of Milestone Assessments or Dynamic Assessments. In addition, some respondents raised concerns in relation to enforceability, and the regulatory burden of this requirement. There were a number of requests for further information, or in a small number of cases, guidance, to aid with the interpretation and understanding of the CSCP content, and of how frequently the information in the plan should be updated. A small number of stakeholders also included suggestions for additional content for the CSCP. One respondent believed that the licence condition for CSCPs should be positioned in a different section of the supply licence. There were few comments received on the licence condition drafting.

Changes we have made to the draft licence condition

4.6. We have not made any changes to the licence condition in light of the stakeholder feedback received. We consider the CSCP will be an effective tool in improving consumer outcomes from energy supplier failures, and consider the benefits of the policy will be maximised by the requirement for all suppliers to hold and maintain CSCPs. We acknowledge stakeholders' suggestions to narrow the scope of the requirement. However, we are concerned that only requiring CSCPs to be produced at certain milestones would mean that important information is not kept up to date. Like any business, energy suppliers' customer base, systems and processes, among other things, can and will change over time. If their CSCPs are not kept up to date on an ongoing basis to reflect changes in the circumstances of the business then it is more likely that the key information to facilitate a smooth exit will not be available when it is needed most.

4.7. We have considered the new comments by stakeholders on the content and implementation of the policy. We provide further information regarding these areas in Appendix 1, though we do not think additional guidance is necessary at this point. We have decided to allow suppliers 16 weeks to produce CSCPs (ie double the normal statutory period for implementation), meaning that we expect each supplier to be able to submit its CSCP if requested from 8 weeks later than the statutory implementation date onwards.

4.8. The final wording of the new CSCPs licence condition is as follows.

Condition 19C (electricity) / 19E (gas). Customer supply continuity plans

19C.1 / 19E.1 *The licensee must ensure it has prepared and has in place, at all times, a customer supply continuity plan, which sets out the licensee's strategy for safeguarding the continuity of supply for its customers in the event of its exit from the market (a* ***Customer Supply Continuity Plan****).*

19C.2 / 19E.2 *The licensee must ensure that the information provided in its Customer Supply Continuity Plan is accurate, and is prepared with due skill and care.*

19C.3 / 19E.3 *The licensee must ensure that the information contained in its Customer Supply Continuity Plan is maintained and kept up-to-date at all times.*

Independent audits

4.9. We are introducing a new licence condition which will allow Ofgem to request that a supplier undertakes an independent audit where we have specific concerns regarding supplier financial health or customer service capabilities. This new power will enable us to obtain an independent view of the root cause of financial or customer service issues suppliers are experiencing. It would provide us with relevant information in a timely manner, enabling us to take action early if appropriate and ensure remedial action can be taken or to prepare for an exit. The intention is for this to work alongside our new and existing regulatory tools, such as milestone assessments and other information requests that Ofgem send regarding financial and customer service data.

Stakeholder feedback

4.10. Independent audits attracted a lot of interest at the statutory consultation phase, with the majority of stakeholders supporting our proposal. Many felt that this would be a useful tool, enhancing our ability to identify and explore potential supplier issues and enabling earlier intervention. Although the majority of stakeholders agree with the concept, there were some concerns around aspects of the design of the policy, including:

- **Scope**: A number of respondents felt that the circumstances in which Ofgem could request an independent audit, and what it might cover, were unclear. For instance, some felt that the wording of condition 5B.2 would allow Ofgem to request information in too broad a range of areas. Another stakeholder pointed out that condition 5B.3 places the obligation on the auditor rather than the supplier.
- **Duplication of existing powers**: Some stakeholders argued that independent audits could potentially be seen as a duplication of existing powers.
- **Regulatory burden**: Some respondents suggested that an independent audit may have adverse effect on a struggling supplier, financially and operationally. As such, they suggested that a requirement to conduct a potentially expensive audit may place an unsustainable burden on a supplier that is already in financial difficulty.

Changes we have made to the draft licence condition

4.11. We welcome the feedback provided by stakeholders in response to our statutory consultation proposals, and have reflected some of the suggested changes in our final decision. Specifically, we have amended the wording of the new licence condition to clarify the matters that we would expect to be covered by an audit and to reflect that the obligation would be placed on the supplier rather than the auditor.

4.12. When considering sending an independent audit request, Ofgem will take into account what information we may already hold, along with what level of detail we may require in specific areas. We appreciate that an audit could have resource and cost impacts. We will carefully assess the relevant circumstances at the time in deciding whether it is appropriate to require an independent audit.

4.13. We would only expect to use this power where other options have been exhausted. Where we already have access to relevant information, or where we can effectively gather

the information via other means such as formal requests for information, we would do so. As such, we do not consider the new requirement duplicates existing powers.

Condition 5B – Independent Audits

5B.1 *After receiving a request from the Authority to commission an Independent Audit that the Authority considers may be necessary for the performance of 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 commission such an Independent Audit and provide to the Authority, in the form requested by the Authority and by the date set by the Authority, a copy of the full audit report.*

5B.2 *The Independent Audit will include one (or more) of the following areas of the licensee's business: a) financial stability; b) customer service systems and processes; or c) where a licensee cannot provide adequate information under Condition 28C.*

5B.3 *If required to commission an Independent Audit pursuant to paragraph 1, the licensee must commission the auditor to carry out the Independent Audit in line with terms of reference supplied by the Authority that are reasonable to meet the purpose of the audit and complying with any code of ethics or similar regulation that applies in the auditor's ordinary course of business.*

5B.4 *The licensee is not required to comply with paragraph 5B.1 if the licensee could not be compelled to produce or give the information in evidence in civil proceedings before a court.*

5B.5 *The licensee must ensure that:*

a) without prejudice to its duty to provide a copy of the report to the Authority by the date set by the Authority, each report prepared in accordance with paragraph 5B.1 is considered by appropriate members of its senior management team within four weeks of the report being provided by the auditor to the licensee; and

b) it keeps a documentary record of the decisions made and actions taken by it in response to that report.

5B.6 *The licensee must take all reasonable steps to ensure that its Affiliates cooperate fully with the Independent Audit, where appropriate.*

Definitions for condition

5B.7 *For the purposes of this condition:*

Independent Audit means an audit carried out by a person(s) with the relevant skills and expertise, other than the licensee or an Affiliate, instructed by the licensee. Unless exempted by the Authority, the auditor must be a person or firm regulated by an appropriate professional body.

Monitoring and Reporting requirements

4.14. We are introducing a new licence condition for suppliers to notify Ofgem in the event of specific changes that may arise in the course of running their businesses, called the 'Additional Reporting Requirement'. We expect suppliers to promptly report to us of any significant changes that may affect its operations, including certain business contact details, any merger, acquisition or divestment plans (including trade sales and purchases), and any changes in ownership or in persons with significant managerial responsibility in respect of the business.

4.15. This policy will help to ensure that Ofgem is informed promptly of issues that could potentially impact, for example, standards and customer service, or a supplier's financial stability, and ensure we can engage as necessary and consider whether any action is appropriate to protect consumers.

Stakeholder feedback

4.16. The Additional Reporting Requirement attracted relatively few stakeholder comments compared to other policies in the package, with just under half of the total number of respondents to the statutory consultation commenting on it directly.

4.17. The two main themes from stakeholder responses were in relation to the scope of the requirement and its implementation. Some suppliers felt that the scope was too broad and that too many staff could potentially fall under the term of Significant Managerial Responsibility or Influence (SMRI). Regarding its implementation, some respondents

sought more clarity on how notifications should be provided to Ofgem. Some technical suggestions were also made regarding the licence condition drafting, one of which was to clarify the scope, and one of which was to make the meaning of the term 'customers' clearer.

Changes we have made to the draft licence condition

4.18. Following the stakeholder feedback received, we have decided not to change the scope of this requirement. We do not think the number of staff that fall under the SMRI definition for each supplier will be large, or that the number of notifications required to be made to Ofgem will be excessive. We have provided further detailed information on how notifications should be made to Ofgem (please see Appendix 1).

4.19. Having considered some of the suggested drafting changes from stakeholders, we have made one minor amendment to the licence condition drafting from the statutory consultation. This change is to the notification regarding trade sales or purchases, which now makes clearer the requirement for the supplier to notify Ofgem before entering into a binding agreement.

4.20. The final wording of the new licence condition is as follows.

Condition 19AA – Additional reporting requirement

19AA.1 *The licensee must notify the Authority of any change in any of the matters listed in 19AA.2, promptly and within a reasonable timescale.*

19AA.2 *The matters referred to in paragraph 19AA.1 are the following:*

a) whether the licensee is entering into a binding agreement for a Trade Sale or a Trade Purchase, and for the avoidance of doubt, the notification should take place before the licensee enters into such an agreement;

b) the address of the licensee's registered office;

c) the e-mail address of the licensee's regulatory contact;

d) whether the licensee is an Active Supplier in respect of Domestic Customers and / or Non-Domestic Customers;

e) whether a Relevant Merger Situation has arisen in respect of the licensee;

f) any Person with Significant Control in respect of the licensee;

g) any Person with Significant Managerial Responsibility or Influence in respect of the licensee;

h) whether the licensee supplies any Customers through a White Label Tariff;

i) any significant changes that may affect how a licensee operates.

Definitions for condition

19AA.3 *for the purposes of this condition:*

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

Relevant Merger Situation has the same meaning as under section 23 of the Enterprise Act 2002.

5. Exit arrangements

Section summary

In this chapter, we set out new rules to minimise the disruption associated with supplier exit. These policies include changes to certain customer contract terms to ensure administrators are subject to some of the same requirements as suppliers, proposals to enable us to prevent customer book sales that may be harmful for consumers, as well as providing an update on our work in relation to portfolio splitting.

Customer interactions with administrators

5.1. We are introducing a requirement for suppliers to include references in customer contract terms and conditions to the effect that activities relating to debt recovery will be executed as outlined in relevant licence conditions.

5.2. Our view is that insolvency practitioners should have regard to the terms and conditions in the customer contracts, and this should ensure there is consistency with the way a licensed energy supplier could pursue debt. We think this change is justified given the potential harm to consumers. We will also continue to engage with the relevant regulatory bodies for insolvency practitioners, and where possible consider whether there are opportunities to work together to ensure energy consumers are treated in a fair and reasonable way.

Stakeholder feedback

5.3. The majority of the stakeholders disagreed with our proposal. Those that were supportive of the intent thought the policy would be ineffective. A few respondents, for example Citizens Advice, supported the policy. They felt it would have some positive impacts on consumers, mitigating the potential for consumers to have poor experiences where they owe money to a supplier that has failed. Most were very supportive of Ofgem working with the relevant insolvency bodies, and exploring wider opportunities for reforms.

5.4. A number of suppliers have commented that the drafting does not reflect the policy intent. Some considered that the proposed wording was going beyond the existing licence conditions, and placing new requirements on suppliers. One concern raised was in relation

to prepayment customers, and how establishing their ability to pay in advance of taking payment would work in practice. A few suppliers suggested the administrative burden of implementing the new requirement would be significant.

Changes we have made to the draft licence condition

5.5. We expect the burden of the new requirements to be extremely modest both in its initial implementation and on an ongoing basis on most suppliers, and will provide some measure of protection to consumers who might otherwise have no or limited routes of recourse. We have considered the feedback and suggestions on the proposed licence drafting and agree some clarifications are appropriate to ensure that the proposed drafting accurately reflects the policy intent. We have:

- Changed the licence condition reference from 27.8A to 27.8C to take into consideration the introduction of the new Self-Disconnection licence conditions.
- In response to the concerns that the previous licence drafting went beyond the policy intent, we have amended the licence condition so it refers to the relevant conditions that should be reflected in the contract terms and conditions. This is the drafting approach that was previously consulted upon as part of our October policy consultation and was suggested by a number of stakeholders.

5.6. We recognise that for some suppliers there could be costs associated with updating terms and conditions, and associated documentation. We will take into account that some suppliers may need additional time to make the required changes.

5.7. The final wording of the new licence condition is as follows.

Condition 27.8

27.8C *The licensee must ensure that the terms and conditions of each Domestic Supply Contract or a Deemed Contract reflect the following provisions of the standard conditions:*

(a) paragraphs 5 to 8 (inclusive) of standard condition 27 and paragraphs 5 and 6 of standard condition 28B, stipulating that charges may not be demanded or recovered unless and until it can be established that the corresponding contractual terms have been complied with; and

(b) paragraphs 17 and 18 of standard condition 27.

27.8D *The licensee must ensure that the terms and conditions of each Domestic Supply Contract provides for the right for the customer to offset any amount owing to the customer pursuant to the contract against any amounts owed by the customer under any other Domestic Supply Contract or under any contract for the supply of [gas/electricity] to premises (whether or not the licensee continues to hold an Electricity Supply Licence or Gas Supply Licence).*

27.8E *The licensee must ensure that the terms and conditions of each Domestic Supply Contract or a Deemed Contract stipulates, for the avoidance of doubt, that the relevant conditions referred to in paragraphs 27.8C and 27.8D will continue to bind the licensee after termination of this licence.*

Customer book sales

5.8. We are introducing a new requirement for suppliers to notify Ofgem when they are planning to undertake a commercial transaction which would result in the transfer of customers. We are also introducing a licence condition that prevents licensees from engaging in commercial transactions that subvert or distort, or are likely to subvert or distort, the Supplier of Last Resort process; and / or make it more likely, in the Authority's opinion, that costs will be mutualised.

5.9. As stated in previous consultations, we recognise that commercial transactions between suppliers are an important part of normal market functioning, and in general would not expect regulatory intervention to be needed in relation to such transactions. We recognise that there are often benefits for customers of these issues being resolved outside of the SoLR process, 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 smeared across the industry.

Stakeholder feedback

5.10. Most respondents were generally supportive of the proposals, but requested more clarity about when Ofgem would intervene in commercial transactions. Some feedback centred around the notification element of the proposal – it was suggested that more clarity would be required as to exactly which stage Ofgem would seek notification.

Stakeholders were also concerned the drafting could delay or disrupt transactions which may benefit consumers.

Changes we have made to the draft licence condition

5.11. We have considered the feedback and suggestions on the proposed licence drafting and agree the proposed drafting could be clearer in relation to the notification requirement. We have:

- Changed the notification requirement to provide more clarity for stakeholders as to when Ofgem should be notified of a proposed trade sale, specifically, that this should be before licence holders enter a binding agreement for a trade sale or trade purchase.
- Made a minor change due to a typographical error in SLC 19D.1.

5.12. The final wording of the new licence condition is as follows:

Condition 19

19AA.1 *The licensee must notify the Authority of any change in any of the matters listed in 19AA.2, promptly and within a reasonable timescale.*

19AA.2 *The matters referred to in paragraph 19AA.1 are the following:*

whether the licensee is entering into a binding agreement for a Trade Sale or a Trade Purchase, and for the avoidance of doubt, the notification should take place before the licensee enters into such an agreement;

19D.1 *The licensee must not undertake a Trade Sale or Trade Purchase that:*

a) subverts or distorts, or is likely to subvert or distort the Supplier of Last Resort process; and / or

b) makes it more likely, in the Authority's opinion, that costs will be Mutualised.

SoLR commitments

5.13. We are clarifying the requirement for suppliers to take all reasonable steps to honour the terms of the bid they provide as part of the SoLR selection process. We are also introducing a requirement for suppliers to include a clause in deemed contracts committing them to honouring customer credit balances where that contract arises from a SoLR process and the supplier has committed to honouring credit balances.

Stakeholder feedback

5.14. Respondents were generally in favour of the proposals, on the understanding that "all reasonable steps" is based on the level of information provided to bidding suppliers at the time the commitment was made, suppliers will not be held responsible for the regulatory failings of those who default, and they will still be able to pursue a Last Resort Supplier Payment for additional and unexpected costs (such as additional credit balances that they were unaware of when appointed SoLR).

5.15. One respondent suggested an amendment to the wording of the licence condition to reflect this. They suggested that this licence condition should explicitly state that the obligation to take all reasonable steps to honour any commitment made is "based on the information available at the time."

Changes we have made to the draft licence condition

5.16. We have carefully considered responses and have decided to retain our original drafting of the licence conditions. These changes provide clarity on our expectations of SoLR suppliers, and they are consistent with the principles established in past SoLRs.

5.17. We agree that the SoLR should only be responsible for commitments it made based on the information available to it at the time any commitment was made and this is implicit in the drafting. We consider the inclusion of "all reasonable steps" achieves the intent of the policy. It reflects that SoLRs may face challenges due to issues outside their control that could not have been reasonably foreseen at the time of bidding.

5.18. The final wording of the new SoLR commitments licence conditions are as follows.

Condition 7. Terms of Contracts and Deemed Contracts

Terms of Deemed contracts

7.12 *The licensee must ensure that each Deemed Contract contains terms and conditions which:*

a) reflect the effect of the provisions of standard condition 7; and

b) require the licensee to honour Customer Credit Balances, provided and to the extent that the licensee committed to do so before the Authority gave it a Last Resort Supply Direction and the Deemed Contract arose as a result of the Last Resort Supply Direction.

Condition 8. Obligations under Last Resort Supply Direction

Licensee's obligations

8.3 In complying with the Last Resort Supply Direction, the licensee must take all reasonable steps to honour any commitment made to the Authority before the Authority gave it a Last Resort Supply Direction.

Appendix 1: Stakeholder feedback to statutory consultation proposals

1.1. This licence modification decision follows two consultations, published in October 2019 and August 2020 respectively, that described our changes and rationale. We also published a working paper in May 2019 and presented at several workshops that gave stakeholders an opportunity to engage with us on our proposals. We note that many respondents have welcomed this as an open and inclusive consultation approach. In reaching this decision, we have carefully considered and taken into account all views put forward by stakeholders.

1.2. We received 31 responses to our August 2020 statutory consultation from suppliers, a consumer group, industry groups and third parties. Two of these responses were confidential. An overview of stakeholder responses, and our way forward, is set out below. We have summarised all licence drafting feedback in a table at the end of this document, and provided commentary on whether we have adopted them or not and why.

Financial Responsibility Principle

Stakeholder views

1.3. Over half of the respondents supported the introduction of the principle. They commented that a principles-based approach would provide flexibility for suppliers to adopt practices that best suit their individual business models. One welcomed the move away from prescriptive measures as they felt that these would disproportionately impact smaller suppliers. A small minority think that we should consider the success of these reforms before introducing further prescriptive requirements on cost mutualisation.

1.4. A majority of respondents supported the principle and our rationale for proposing it, but just under half questioned how effective it would be without accompanying prescriptive measures. They were keen we continue to develop and consider the case for prescriptive measures.

1.5. Two respondents did not support the principle, and questioned whether it would drive meaningful change in supplier behaviour. A few respondents were unhappy that the new principle was proposed at statutory consultation stage, and suggested that an updated impact assessment should have been provided. One disagreed that suppliers should be required to manage the costs that may be mutualised in the event of their

failure – they argued that the current price caps do not adequately allow suppliers to do so.

1.6. A small number suggested we should monitor the implementation of the principle and that we publish details on our success criteria for this principle. The majority of respondents requested that we publish guidance, and a small number also suggested we provide details of our enforcement approach. There were a number of suggestions for the types of content that should be included within these. One suggested that a proportionate approach needs to be taken to non-domestic suppliers, as they felt that supplier failure and cost mutualisation was less likely to occur in the non-domestic part of the market.

Our view

1.7. We remain of the view that a principles-based requirement, for all suppliers in the domestic and non-domestic sectors to take actions that minimise the likelihood of costs to be mutualised in the event of their failure, will help ensure suppliers to bear an appropriate share of their risk. The Financial Responsibility Principle will allow us to identify and address problems with supplier financial practices earlier, and would complement existing licence obligations.[4] For example, our expectations regarding suppliers' use of customer credit under the new principle would be considered alongside existing obligations on suppliers to review fixed direct debits so that they are set at the right level, and to ensure they are able, where reasonable, to refund credit balances on request.[5]

1.8. We are taking a phased approach to introducing our cost mutualisation proposals to allow us to deliver benefits for consumers as quickly as possible, while allowing appropriate opportunities to explore stakeholder views and consider further the detailed design of any more prescriptive proposals. We provide an update on our consideration of prescriptive measures in chapter 2.

1.9. We consider it is appropriate that the Financial Responsibility Principle applies to non-domestic suppliers as well as domestic. We have seen failures of non-domestic

[4] For example SLC 0 - "The Standards of Conduct", SLC 31F/31I – "Informed tariff and consumption choices", SLC 27.15 – "Setting Direct Debits", and SLC 27.16 – "Refunding customer credit balances on request".
[5] Under Standard Licence Obligations 27.15 and 27.16.

suppliers, and the issues we seeking to address are not unique to domestic suppliers. We would expect a financially responsible supplier to ensure it is managing its credit balance costs sensibly, irrespective of whether they may be mutualised. However, for the purposes of this condition, our monitoring approach will be proportionate to the risk of mutualisation. For example, credit balances for non-domestic customers cannot be recovered through Last Resort Supply Payment, so our monitoring of credit balances may be proportionately lower for non-domestic suppliers.

1.10. We acknowledge that the Financial Responsibility Principle was introduced at the statutory consultation phase. However, the principle is entirely consistent with the aims and objectives we have already consulted on previously, and these received strong stakeholder backing. Our decision to take a phased approach to introducing our cost mutualisation protection proposals was also following careful consideration of the feedback we had from stakeholders to the October consultation.[6] We published an open letter in February to explicitly make industry aware of our intention to change our approach and introduce a high-level principle first.[7]

1.11. An updated impact assessment was not provided because we would expect the introduction of the Financial Responsibility Principle would not have a significant cost impact on suppliers or give rise to substantial additional burden. We are not being prescriptive how supplier should meet the principle, so a financially responsible supplier should already be managing their costs effectively, and we would not expect providing evidence of this (in the event that we were to request such evidence) to impose significant additional costs. If we determine that more prescriptive, targeted requirements are required to support this principle, we will provide an update on our intended approach to the impact assessment as part of this policy development.

1.12. The default tariff cap includes a headroom amount above the efficient benchmark. This amount allows for competition and uncertainty under the cap. We consider the level of headroom in the default tariff cap sufficient to cover mutualised costs from supplier failure.

[6] Ofgem, Supplier Licensing Review: Ongoing requirements and exit arrangements, 22 October 2019
[7] Ofgem, Update on timing and next steps on the Supplier Licensing Review, 3 February 2020

Guidance and monitoring

1.13. We are consulting upon guidance alongside this decision document. In drafting the guidance document we have considered the suggestions by stakeholders. We welcome views on the guidance document by 22 January 2021. We have not included details of our enforcement approach within the guidance document as the existing ones available from our website would apply in this case.[8]

1.14. During the first 12 months of the principle being introduced, it is likely we will engage with suppliers regarding how they are meeting the new obligation. This should help us develop a risk-based monitoring approach going forward. The way we engage and the precise information requested will be dependent on what additional information we require, given suppliers are already or may be requested to submit financial and other information to Ofgem. We will seek to ensure there is no duplication in requests. We agree the monitoring approach should be proportionate to the risk of mutualisation and our monitoring approach to non-domestic suppliers will reflect this.

1.15. We may review our ongoing approach to monitoring and compliance as our thinking in relation to prescriptive protections evolves. Where this would require changes to our guidance we would consult on this with stakeholders.

Operational capability principle

Stakeholder views

1.16. Several respondents commented that the operational principle duplicates existing licence conditions (in particular the Standards of Conduct), and questioned the extent to which it provides Ofgem with additional powers. Some were concerned that the operational principle will place further burdens on otherwise responsible suppliers, and said that our monitoring and compliance assessment should be risk-based.

1.17. Some respondents suggested that Ofgem should provide guidance on what is meant by 'efficiently and effectively', how we would monitor compliance, provide clear assessment criteria, and details of how and when we may intervene. A couple of

[8] Ofgem, The Enforcement Guidelines, 10 October 2017

respondents said that any guidance should reflect that supplier operational structures differ and the application of the principle should be proportionate, to reflect suppliers' size and individual circumstances.

Our view

1.18. Our view is that an explicit overarching principle to enable us to take action, if appropriate, where a supplier's operational capability is insufficient to serve its customers or meet its regulatory obligations, would complement existing regulations. The operational capability principle makes explicit our expectation that suppliers proactively identify current or future risks of consumer harm, consider whether their systems and processes would effectively mitigate these risks, and adapt them where this isn't the case.

1.19. An example of where we see the operational principle being useful is to address issues in the quality of suppliers' data management. Poor data management can cause consumer harm and contribute to customer disruption during a supplier failure, as we have seen in some recent supplier failures. It can cause harm in the form of poor customer service and lead to less competitive Supplier of Last Resort events, which may increase costs for consumers. The operational capability principle will strengthen our ability to pre-empt and prevent consumer harm, and to address the root causes of poor supplier performance in a timely manner.

1.20. We anticipate that most suppliers already operate in line with this principle and we would not expect that significant changes would be required in how they currently operate. We therefore do not agree that this will be burdensome for already compliant suppliers, but we would expect poor performing suppliers to raise their standards.

1.21. Responsible suppliers should continuously assess and mitigate risks to their ability to serve their customers effectively – regardless of their business model, and suppliers should be able to determine how they will meet this principles based requirement without the need for extensive guidance.

1.22. As stated in the statutory consultation, we intend to take a risk-based approach in our monitoring of this requirement. We may take action where we see suppliers engaging in poor risk management practices and not exercising due diligence. There could be a number of indicators of this, including showing a lack of preparedness for growth through milestone or dynamic assessments or evidence of poor data management in Customer Supply Continuity Plans.

Milestone assessments/ dynamic assessments

Stakeholder views – Milestone assessments

Thresholds

1.23. The vast majority of respondents were supportive of milestone assessments and were generally supportive of reducing the number of assessments to two. Respondents were particularly supportive of the 50,000 domestic customer threshold. Some thought that, rather than a 200,000 customer threshold, the threshold should be set at 150,000 or 250,000 domestic customers to tie in with existing social and environmental obligations.

1.24. A few favoured higher thresholds, for example a threshold at 500,000 or 1 million domestic customers. Some of the reasons given were that the systems and processes required to serve a larger customer base are different, larger suppliers may have a higher proportion of vulnerable customers, and due to the impact that a large supplier failure may have.

1.25. A couple of respondents highlighted that the obligation thresholds are defined differently throughout the licence conditions, which could cause confusion to suppliers. One suggested that Ofgem should define the threshold as 'absolute customer numbers' with dual fuel accounting for one customer account (or number of domestic premises supplied). Some respondents did not agree that it was necessary to have a requirement to notify Ofgem both before a supplier reaches the relevant threshold, and when they reach it.

Assessment

1.26. Some respondents commented on the assessment criteria. Comments included that debt collection processes, hedging strategies and ability to finance wholesale purchases in a rising or volatile market should be assessed. One respondent said that Ofgem should clarify how it will appraise sustainability and should take into account when suppliers use systems and third party providers commonly accepted as reputable within the industry. Another respondent said that assessment of business models should only be for those that do not make a profit, and that milestone assessments should also be conducted prior to any trade sale. One respondent said that the fit and proper requirement and Customer Supply Continuity Plans should be part of the milestone assessment rather than separate licence conditions.

Implementation

1.27. One respondent stated that 15 working days to respond to a milestone assessment RFI is insufficient as suppliers may need to obtain data from 3rd party service providers. They suggested that 4 weeks would be appropriate with scope for flexibility over the holiday periods. One respondent suggested that suppliers should be able to submit the required information in their own format rather than in a template as this would be less burdensome. Some suggested that Ofgem should make use of the data it already collects to avoid the duplication of requests. Another respondent commented on the point that a milestone assessment may be delayed if a supplier was to pass a threshold due to being appointed as a SoLR. They suggested that this could lead to an unprepared supplier becoming a SoLR.

Stakeholder views - Dynamic assessments

1.28. The vast majority of respondents were supportive of dynamic assessments as long as they are used proportionately. Some commented that dynamic assessments would only be effective if Ofgem act quickly when there are early signs of detriment. Several respondents said that it was important that assessments are not burdensome. They highlighted that Ofgem should first contact suppliers informally to discuss any concerns, and if an assessment is needed it should be specifically targeted at the area of concern. One respondent suggested that dynamic assessments should align with the existing framework for managing compliance cases and be co-ordinated via account managers.

1.29. A couple of respondents suggested that Ofgem should issue clear guidance so suppliers can understand how and why Ofgem may intervene and when dynamic assessments will be used. One said that Ofgem should seek to publish a notice whenever launching a dynamic assessment to ensure transparency over the process, while another said that there is a need for a clear governance process, similar to the processes set out in the Enforcement Guidelines. One respondent questioned the legitimacy of using dynamic assessments as they are not mentioned within the proposed new licence conditions, though they welcomed Ofgem's commitment to use them proportionately.

Our view - Milestone assessments

Thresholds

1.30. We disagree that milestone assessments should be tied to existing regulatory obligation thresholds. As noted in the statutory consultation, we consider that a single assessment threshold of 200,000 would reduce the burden on both suppliers and Ofgem and would enable us to check supplier's preparedness to meet regulatory obligations beginning at 250,000, with the benefit of being able to look at how a supplier is meeting its obligations that began when they reached 150,000 customers. Milestone assessments are about overall preparedness for growth, not just preparedness to meet regulatory obligations. Regulatory thresholds can change, and although we want to test preparedness to meet obligations, these can still be checked as part of the assessments without being tied to other specific regulatory obligation thresholds. We also disagree with respondents who said that there is a need for a higher threshold.

1.31. Fewer additional regulatory obligations apply to suppliers above 250,000 customers, and these suppliers would still be subject to dynamic assessments if we have concerns about their financial sustainability or ability to serve their customers. These suppliers could also be subject to an independent audit.

1.32. We acknowledge that not all obligation thresholds within the supply licences are defined in the same way. However, we disagree that the definition used for milestone assessment thresholds should cause confusion for suppliers. The definition of milestone assessment thresholds (domestic customers for each individual fuel, in terms of unique customer accounts, rather than meter points) is the same as for several existing obligations in the supply licences, for example rules on payment methods under domestic supply contracts (SLC 27.2).

1.33. We agree with the respondents who questioned the benefit of having a requirement to notify Ofgem both a reasonable time before a supplier reaches the relevant threshold for the first time, and again once they reach the threshold. We have decided to remove the first of these threshold notification points, so that suppliers will only have to notify Ofgem once they reach their first 50,000 or 200,000 domestic customers and not before.

Assessment

1.34. Our view is that milestone assessments should be similar to the assessment criteria when suppliers enter the market, focusing on a supplier's preparedness to meet its obligations and its wider preparedness for growth in relation to its customer service function and financial strategy. We therefore agree with the respondent who said that the assessment should look at debt collection processes, hedging strategies and ability to finance wholesale purchases in a rising or volatile market.

1.35. In response to the comments that assessment of business models should only be for those suppliers that do not make a profit and that we should take into account when suppliers use systems and third party providers commonly accepted within industry, as stated in the statutory consultation, we will not assess suppliers' business plans for viability or profitability, nor undertake a quantitative assessment or any financial modelling. The assessment criteria will be risk-based and, where we have concerns or need more information, we may request clarification or request an independent audit where appropriate.

1.36. We disagree with the respondent who said that milestone assessments should be conducted prior to any trade sale. Nevertheless, suppliers may be required to undergo a milestone assessment if they pass the relevant threshold due to a trade sale and we are also introducing separate rules to reduce the risk that trades sales subvert or distort the SoLR process and/or make it more likely that costs will be mutualised.

1.37. We disagree with the respondent who said that the Fit and Proper persons requirement and Customer Supply Continuity Plans should be part of the milestone assessment rather than separate licence conditions. The aim of the Fit and Proper requirement is to ensure suppliers have robust systems, processes and governance in place to ensure relevant individuals are fit and proper. It requires specific licence conditions to ensure this, and evidence of compliance will be requested on the basis of risk. Milestone assessments have a different aim – to ensure suppliers are adequately prepared and resourced for growth. Customer Supply Continuity Plans also require a separate licence condition. However, we may require these to be submitted as part of milestone and dynamic assessments.

Implementation

1.38. We agree with the respondent that suggested 15 working days to respond to a milestone assessment RFI may be insufficient as suppliers may need to obtain data from 3rd party service providers. They suggested that 4 weeks would be appropriate, with scope for flexibility over the holiday periods. We have amended the milestone assessment guidance to reflect this change. We will generally request a response from suppliers to the milestone assessment information request within 20 working days, rather than the 15 working days proposed in the statutory consultation.

1.39. We acknowledge the view of the respondent who suggested that suppliers should be able to submit the required information in their own format rather than in a template as this would be less burdensome. We are currently considering the most appropriate format for milestone assessment submissions.

1.40. We agree with the respondents who said that Ofgem should make use of the data it already collects to avoid the duplication of requests. For both milestone assessments and dynamic assessments, we will look at the data we already have on a supplier before determining whether an assessment is necessary and what information is required.

1.41. We disagree with the respondent who said that delaying a milestone assessment for a supplier who passes a threshold due to being appointed SoLR could lead to an unprepared supplier becoming SoLR. The Supplier of Last Resort process mitigates this risk. In deciding which supplier to direct, we must be satisfied among other things that the SoLR could supply the additional customers without significantly prejudicing its ability to continue to supply its existing customers and to fulfil its contractual obligations for the supply of gas or electricity.[9]

Our view - Dynamic assessments

1.42. We agree with respondents who said that dynamic assessments should not be burdensome and that Ofgem should first contact suppliers informally to discuss their

[9] Ofgem, Guidance on supplier of last resort and supply company administration orders, October 2016.

concerns, and if an assessment is needed, it should be specifically targeted at the area of concern. In our statutory consultation, we stated that this was our intended approach.

1.43. We disagree that Ofgem should issue guidance to clarify how and why we may intervene and when dynamic assessments will be used, that Ofgem should publish a notice whenever launching a dynamic assessment to ensure transparency over the process and that there is a need for a clear governance process, similar to the processes set out in the Enforcement Guidelines. We have stated in our statutory consultation the factors that we will use to determine whether a dynamic assessment is required, and that this will be done using a risk based approach. We do not consider it appropriate to publish notices when launching a dynamic assessment, though we may publicise if this results in compliance engagement.[10]

1.44. We also disagree with the respondent who questioned the legitimacy of using dynamic assessments as they are not mentioned within the proposed new licence conditions. Our view is that new licence conditions are not required for dynamic assessments, as we will be using our existing information gathering powers under Condition 5 of the Standard Supply Licences.

Ongoing Fit and Proper requirements

Stakeholder views

1.45. Most stakeholders were generally supportive of the proposed Fit and Proper requirement. A very small minority were not convinced this requirement would deliver its intended policy outcomes. Points raised by some respondents included that an ongoing Fit and Proper requirement may be ineffective in tackling excessive risk taking by some suppliers, could place an additional burden on suppliers already operating responsibly or would not provide the same protections as checks introduced at market entry.

Scope of requirement

1.46. Some respondents argued that the definition for people with 'Significant Management Responsibility or Influence' (SMRI) is open to interpretation and lacks the

[10] Ofgem, Retail Compliance

clarity required for suppliers to take a consistent implementation approach. These respondents requested more clarity about who would be considered relevant for the purpose of this requirement.

Implementation and monitoring

1.47. While most stakeholders broadly agreed with our proposed approach for implementing this requirement, a few respondents remained unclear whether the requirement would apply to existing staff who fall within its scope. Those respondents said they would welcome further clarity on what actions Ofgem expects suppliers to take if an existing senior staff member fails to meet some of criteria set out in the licence condition. They also requested further clarity on Ofgem's approach to assessing compliance, particularly where an individual is connected to a previous SoLR.

1.48. Some stakeholders also raised minor comments about our proposed approach to implementing this policy. Four respondents considered the requirement and associated licence drafting would overlap with existing regulations. Three respondents highlighted that some suppliers already perform similar checks on senior management. These respondents suggested Ofgem should ensure it avoids unnecessary duplication when implementing this requirement.

1.49. One respondent requested that Ofgem should extend the statutory implementation timeframe, given the amount of concurrent regulatory changes anticipated over the next 12 months. Another stakeholder was of the view that a one-year transitional period would be necessary to ensure and facilitate timely and compliant implementation.

Our view

1.50. As a regulator of an essential service, we continue to believe it is important for energy suppliers to have strong governance arrangements, and to foster a culture of management accountability and responsibility. This can only be achieved if each energy supplier ensures that its key decision makers are fit and proper to perform their role on an ongoing basis.

Scope of requirement

1.51. In line with established legal concepts and existing regulations[11], our view remains that the definition for SMRI used in our ongoing fit and proper policy should be consistent with the definitions used for the new entry requirements.[12] It is important that this requirement applies to those individuals that are in a position to make or significantly influence key decisions.

1.52. We recognise there are varying governance arrangements across the sector and therefore do not consider it appropriate to specify a list of roles captured by the definition of SMRI. Decisions as to which individuals would be considered relevant for the purposes of this requirement will be dependent on a number of factors, such as the size of the organisation and the individuals' job descriptions. Generally, we would expect that for the majority of cases, the new requirement would apply to company directors. In a minority of cases, it may also extend to other senior managers at the top of the organisation. We believe suppliers are best placed to determine which individuals fall within the scope of the licence condition. We expect this would include, but not necessarily be limited to:

- Senior-level individuals who influence or make key decisions in relation to a supplier's finances, eg finance reallocation, plans to make industry or regulatory payments, or
- Senior-level individuals who influence or make key decisions on how the company operates.

Assessment criteria

1.53. We expect suppliers to base their assessments on information that is reasonably available to them at the time. Suppliers should take into consideration an individual's particular role in any past activities that fall under the scope of this policy - for example, involvement in a previous supplier failure, or enforcement or compliance activity. We note that individuals' involvement in these activities may not automatically mean the individual is not fit and proper for their role. Suppliers should consider the nature of the individual's role as part of those activities – for example, whether the individual contributed to, or helped to mitigate, any consumer harm, or to the mutualisation of costs. Where the

[11] Including the definitions used within the Corporate Manslaughter and Corporate Homicide Act 2007
[12] Ofgem, Decision on new Applications Regulations and guidance document, 18 June 2019

information available to suppliers is limited, they may wish to consider seeking signed declarations or other assurances from relevant individuals.

Interactions with existing regulations

1.54. We recognise there are similarities between our Fit and Proper requirement and existing regulations, including the Companies Act 2006, for example. However, this and other requirements are not specific to the energy market, nor do they encompass the interests of energy consumers and other retail energy market participants in their assessment checks. As such, we consider there is benefit in having a direct, explicit licence requirement setting out our expectations of energy suppliers.

Compliance and monitoring

1.55. We expect suppliers to assess and mitigate the risks of non-compliance with the Ongoing Fit and Proper requirement. Suppliers should have robust internal systems, processes and governance that ensure existing and new staff holding a position of SMRI are fit and proper to carry out their duties. We do not consider this approach overly burdensome to demonstrate compliance, particularly in cases where suppliers are already performing similar checks mandated under other legislative frameworks.

1.56. As previously stated in our statutory consultation, we do not intend to prescribe the frequency with which suppliers carry out checks on relevant individuals' suitability. We expect firms to undertake appropriate checks and we anticipate that responsible suppliers will already be regularly reviewing their process and systems, as part of their wider governance processes. In assessing compliance with the requirement, we may examine internal procedures suppliers have in place around fit and proper assessments, including those relating to recruitment, performance and disciplinary processes, governance arrangements and the framework.

Open and Cooperative principle

Stakeholder views

1.57. Most respondents were in favour of our proposed Open and Cooperative principle, though a small minority were not convinced this requirement would be effective in delivering its intended policy outcomes. Those that did not support the new principle

suggested that it is unlikely to be effective in driving culture change for suppliers who do not engage appropriately with the regulator.

1.58. Some respondents argued that for this principle to be effective, Ofgem should also improve its communication channels by reinforcing the account management relationship.[13] Others suggested that we provide additional guidance regarding our expectations of suppliers, particularly the type and materiality of matters of which Ofgem expects to be notified.

1.59. Four respondents felt the principle might be duplicating current arrangements, including some of our information-gathering powers.[14] They suggested that Ofgem already has powers to compel a supplier to provide information in various circumstances, and that the principle would duplicate these powers. One respondent requested more clarity on the interaction between the proposed principle and current enforcement guidelines, particularly where a supplier self-reporting breaches and cooperating with an enforcement investigation can potentially mitigate any penalty imposed.

Our view

1.60. We continue to believe it is important that suppliers foster an open and cooperative relationship with Ofgem and are willing to engage constructively with us in compliance and other relevant exchanges. However, we have seen cases where some suppliers have not displayed these behaviours. Lack of cooperation and transparency from suppliers can reduce Ofgem's ability to effectively protect consumers, oversee the market and could create barriers to us being able to fulfil our statutory duties. The consequences of this are delays to issues being resolved and an increased risk of consumer or market detriment occurring.

1.61. We anticipate that the Open and Cooperative principle, in conjunction with other new requirements under this review, would strengthen our ability to identify and address issues early before serious consumer detriment occurs. This can only be achieved if

[13] We have established processes for engaging suppliers regularly on set topics. Ofgem's account managers act as a first point of contact with whom the supplier can build a relationship and exchange information.
[14] These include requirements set out in Supply Standard Licence Condition 5 – the supply licence conditions are published on our website.

suppliers start a dialogue with us as soon as possible about circumstances that might negatively affect their customers or their ability to meet their obligations.

Scope of requirement

1.62. Under the terms of their licence, all suppliers are required to engage with us and disclose relevant information to enable us to perform our statutory duties. We have consistently made clear that we expect suppliers to work with us to reduce the potential for consumer harm and to resolve issues when they do occur by highlighting any potential consumer detriment as early as possible.

1.63. As previously stated in the statutory consultation, we expect suppliers to determine when it is appropriate to keep us informed of relevant developments and changing circumstances. These circumstances include but are not limited to changes that could affect their financial resilience or ability to continue to supply their customers.

1.64. An example of where we see the Open and Cooperative principle being particularly relevant are instances where a supplier is intending to engage in a customer book sale. While we appreciate there may be uncertainties surrounding such transactions, we still expect suppliers to be proactive in discussing with us relevant information. For instance, we would want to be informed in advance plans for communicating with and on-boarding new customers. In this instance, early engagement and transparency from the supplier will enable us to ensure that they are putting in place adequate safeguards to prevent possible consumer detriment.

1.65. We anticipate that most suppliers are already acting in line with this requirement and do not believe our approach will be overly burdensome on already compliant suppliers or that detailed guidance is required. We also anticipate that this requirement would encourage a behavioural shift among poor performing suppliers by ensuring issues did not go unreported for an extended period of time.

Interactions with existing requirements

1.66. Certain existing obligations focus on actions suppliers must take when explicitly requested. The new principle would build on the existing rules by making clear our expectation that suppliers should be proactive in starting early engagement and work with us to ensure any issues including those in relation to financial distress are managed effectively and efficiently.

1.67. We recognise that there are interactions between this principle and our Enforcement Guidelines and Penalty Policy. We will be considering this and expect to provide an update in due course.

Customer Supply Continuity Plan

Stakeholder views

1.68. **Regulatory burden and applicability**: Several respondents commented they would like to narrow the scope of the Customer Supply Continuity Plan (CSCP) policy, and suggested suppliers should only be required to produce the plans as part of Milestone Assessments or Dynamic Assessments. Two respondents felt that for larger suppliers that would more likely (in the event of failure) be subject to a Special Administration Regime (SAR) than a SoLR process, the new requirement appeared to bring limited benefits for the regulatory burden incurred, because a SoLR process would not be utilised in the case of a larger supplier. One stakeholder believed a customer number threshold of one million customers could be applied, such that suppliers larger than this would not need to hold and maintain a CSCP. Some stakeholders also felt that there were other routes by which Ofgem could obtain the relevant data and information in CSCPs from suppliers, eg through formal requests for information. Two respondents requested a longer implementation period than the one additional month proposed, arguing that 2-6 months would be appropriate. Another respondent felt that the CSCP policy needed to come into effect before the Milestone Assessments and Dynamic Assessments policy, rather than afterwards.

1.69. **Enforceability:** Some respondents suggested that failing suppliers were unlikely to keep the CSCP updated, and commented that the consequences of non-compliance were unlikely to be felt by an exiting supplier.

1.70. **Content:** Several respondents suggested additional content for the CSCP. Two respondents felt specific information relating to metering should be included in the CSCP, in particular plans regarding the continuity of metering arrangements (including for prepayment meters), as well as information on meter type and past meter readings. One respondent considered it important that the CSCP should set out how data held by third-party IT billing system providers could be accessed, where applicable.

1.71. **Frequency of updates:** Some respondents suggested that Ofgem should clarify its expectations in terms of how frequently the CSCP should be updated, highlighting the

resource and cost implications to suppliers. A number of respondents requested further information or guidance from Ofgem. One respondent felt that this could be a 'take all reasonable steps' requirement, in terms of suppliers keeping the plans accurate and updated.

1.72. **Positioning in the licence:** One respondent believed that the licence condition for CSCPs should be positioned in a different section of the supply licence, specifically as part of SLC 4A, and grouped with some of the other new policies for ease of reference.

Our view

Regulatory burden and applicability

1.73. We do not think it desirable to narrow the scope of the CSCP policy such that the plans are only produced as part of the new Milestone and Dynamic Assessments, as has been suggested by some stakeholders. This would not help to achieve one of the main aims of the CSCP policy, which is to ensure that all suppliers are prepared for a potential market exit, rather than only those suppliers that have recently been subject to one of the new assessments. This change would potentially put beneficial consumer outcomes at risk by hindering Ofgem's ability to effectively oversee the market, and by preventing Ofgem from taking early remedial action where required, compared with the proposed policy.

1.74. While larger suppliers could be involved in a SAR process in the event of failure, rather than a SoLR, in the SAR scenario, all of the information and content of a CSCP would still need to be accurate, up to date and readily available. The audience for that information may be different – ie an administrator appointed by Ofgem and BEIS, rather than a SoLR – but the information itself continues to be critical. Therefore, we do not agree that larger suppliers should not be required to produce and maintain a CSCP, nor that there should be a policy threshold of one million customers above which suppliers would not be required to hold and maintain a CSCP.

1.75. We agree that Ofgem has other regulatory options available for requesting information from suppliers in addition to CSCPs, including through information requests. However, we consider that CSCPs will play an important role in ensuring that suppliers are sufficiently prepared for an orderly market exit, and that they will enable Ofgem to take action at an early stage where plans are inadequate. In so doing, they may help to improve market confidence that supplier systems and data are robust and accurate, and make commercial acquisitions more attractive.

1.76. With regards to the requests from two stakeholders to extend the implementation period for the CSCPs policy, we have listened carefully to the concerns raised. We consider that stakeholders have generally been given sufficient notice of our intention to bring the new requirement into effect. However, given that the coronavirus pandemic has also placed additional burdens on suppliers, we have decided it is appropriate to allow a longer implementation period for CSCPs. We have therefore decided to allow suppliers 16 weeks to produce CSCPs (ie double the normal statutory period for implementation), meaning that we expect each supplier to be able to submit its CSCP, if requested, from 18 March 2021.

1.77. We do not consider it problematic that the CSCPs will come into effect after the Milestone and Dynamic Assessments policy. Ofgem will begin to request the submission of supplier CSCPs from late March 2021. Where supplier assessments have taken place before this time, Ofgem would request the relevant suppliers' CSCP soon afterwards.

Enforceability

1.78. We note that some stakeholders expressed concern as to the enforceability of the CSCP policy, when a supplier reaches a position of serious financial difficulty. While we understand these concerns, the CSCP policy requires suppliers to give considerable forethought and forward planning to a potential market exit, on an ongoing basis. This in itself should mean that in future, all suppliers will be in a stronger position in the event that challenges to financial stability may arise. Importantly, Ofgem will be able to assess CSCPs well in advance of a potential market exit, and take any appropriate compliance or enforcement action if required, eg where CSCPs are inadequate or deficient.

Content

1.79. We agree with the stakeholder suggestions that the CSCPs should include some additional content: namely, plans regarding the continuity of metering arrangements (including for prepayment meters), and information on how data held by third-party IT billing system providers can be accessed, where applicable. We also expect CSCPs to contain details of where suppliers' data relating to Warm Home Discount scheme payments is held, and how this can be accessed.

1.80. Regarding information on meter types and on meter readings, we already expect suppliers to have robust processes to record and maintain this data, prior to the introduction of the CSCP policy. We can confirm that we do expect information on how to

access this data to be considered in the CSCPs, but we would not expect the CSCPs to contain the actual data itself.

1.81. Based on these updates, we now expect the content of suppliers' CSCPs to include the following:

- **Supplier information**: Details of arrangements with third-party service providers to ensure continuity of services, billing system information, Priority Services Register customer list, customer numbers, and customer payment method information. This could potentially reduce disruption to customers during the onboarding process in the event of a SoLR process.

- **Key contacts**: Details of key staff: Directors, Heads of Teams, Senior Officers. Details of key contacts at service providers. This information would ensure individuals are aware of their responsibilities even in the event of supplier failure.

- **Customer account information**: Details of the processes that would be followed to prepare a summary of customer debt information and customer account balances. Plans regarding the continuity of metering arrangements for customers (including for prepayment meter customers). In the event of a SoLR process, it is crucial that important customer account information is available to enable a smooth final billing and on-boarding experience for consumers.

- **Data**: Details of how to access data sets, including for data held by third-party IT billing system providers, and details of where data sets are held. Details of how the supplier proposes to keep its data sets up to date. Details of methodologies for handing over information and customer data. This is fundamental information for a potential SoLR and would allow for a smoother transition for customers.

- **SoLR-related**: Plans for engaging with Ofgem, and central industry bodies. Customer communications plans. Assessment of any other barriers to an orderly exit. This interacts with our open and cooperative principle as we expect suppliers to have a strong and transparent relationship with us.

Frequency of updates

1.82. We consider that suppliers are able to take appropriate decisions on when updates are required to the CSCPs, as part of their internal governance processes, and do not

intend to provide detailed prescription on this. A large proportion of the content of the CSCP set out above relates to plans, processes and methodologies, and these should be updated by suppliers whenever significant changes occur.

1.83. One stakeholder made the point that records of customer numbers and customer entries on the Priority Services Register (PSR) would change in close to real time, and requested clarity on wherther the CSCPs needed to be updated accordingly. We expect suppliers to already have robust internal processes around the recording of customer numbers, and the maintenance of the PSR, prior to the introduction of the CSCP policy. However, for the customer numbers and the customer entries on the PSR, we do not expect real time updates to the CSCPs. For these items, the CSCPs should make clear where the data is held and how it can be accessed.

1.84. We do not agree that the licence condition for CSCPs needs to be changed to an all reasonable steps requirement, which one stakeholder suggested, because we do not think this improves the drafting of the condition. The licence condition is already clear that CSCPs must be maintained and kept up-to-date at all times.

Positioning in the licence

1.85. In terms of the positioning of the CSCPs licence condition within each of the electricity and gas supply licences, we think CSCPs fits well with the existing SLC 19, and some of the other new Supplier Licensing Review policies now placed in these sections of each condition. This is because all of these policies relate to types of financial reporting, or notifications.

Independent Audit

Stakeholder views

1.86. In general, the majority of stakeholders expressed support for the introduction of independent audits and can see the benefits this new tool could bring to the energy market. Below we summarise some areas in which stakeholders raised specific points about the drafting of the licence condition itself.

- Some stakeholders felt that the licence condition proposed did not fully clarify the instances in which they would be requested to carry out an independent audit and that the licence condition needed refining for clarity.

- Some stakeholders were of the view that an independent audit request could be seen as a duplication of current Ofgem powers.
- One stakeholder highlighted that the proposed wording of licence condition 5B.3 makes reference to placinge an obligation on the auditors, rather than the supplier itself.
- It was highlighted to us at various stages of the policy consultation process that an independent audit could prove to be a burden on some suppliers and even expedite supplier failure due to the cost of such an activity.
- One stakeholder highlighted that the proposed licence condition should include more prescriptive direction on how the audit report should be shared between the three parties involved.
- We received some stakeholder feedback concerning the wording of the proposed licence condition, asking it to be more specific towards the overall intent to "ensure appropriate protections are in place against financial instability and poor customer service".

Our views

1.87. In our proposed new licence condition, we outline the three areas that an independent audit would cover (financial stability, customer service systems and processes, where a licensee cannot provide adequate information under Condition 28C). Where we have any concerns surrounding those areas, we would look to utilise an independent audit request. These specific areas have been carefully aligned with the overall purpose of the Supplier Licensing Review.

1.88. While we agree that we may be able to source similar information through other regulatory tools, we would like to reiterate that the purpose of an independent audit request would be too ascertain information we are unlikely to be able to access via other means. For this reason, we feel that the decision to introduce this as an additional tool allows us to monitor and regulate the energy market with more efficiency, resulting in reduced risk of consumer harm. Please note that the intention is for independent audits to link in with other regulatory tools, such as requests for information, milestone assessments, etc.

1.89. On the point regarding the wording of licence condition 5.3, we have taken on board feedback on this point and agree that it would be beneficial to re-draft the licence condition for further clarity. This has been changed in our final wording.

1.90. Regarding to points raised around independent audits causing extra burden on suppliers, especially suppliers already in financial difficulty, we would like to make it clear that Ofgem will not make such a request without considerations to these points. As stated above, an independent audit would only be requested in specific circumstances. We would only instruct an audit to be undertaken where other options have been exhausted and it is proportionate to do so.

1.91. Where we agree that there needs to be an agreement in place between all three parties to share the outcome of an audit, we did not feel that this instruction needs to be detailed in the licence conditions. This allows for a more flexible approach on a case-by-case basis. We expect that all information is gathered and shared in line with ISO guidelines.

1.92. Regarding points raised around the current wording of the licence conditions not reflecting the overall objectives, we agree that this is an important point and feel that our intent has been clearly outlined in our final licence conditions. Therefore, we decided that the current wording in the proposed licence condition is sufficiently clear on this.

Monitoring and reporting requirements

Stakeholder views

1.93. **Scope:** Several respondents felt that the scope of the Additional Reporting Requirement was too wide and that too many staff could potentially fall under the definition of Significant Managerial Responsibility or Influence (SMRI). These stakeholders also expressed the view that this would make the new requirement burdensome. A small number of stakeholders felt that the term SMRI was not clear enough, and that different approaches to identifying the relevant members of staff with SMRI could lead to inconsistent outcomes from suppliers.

1.94. **Implementation:** Seven stakeholders commented that more clarity was required on how notifications should be provided to Ofgem. Some of these stakeholders said they felt Ofgem needed to be clearer about the method by which notifications should be made, and the correct recipients for them. Some suppliers expressed the view that they should

be able to make the necessary notifications through their Supplier Account Manager at Ofgem, including through verbal engagement only.

Our view

1.95. **Scope:** We consider that our Fit and Proper policy provides sufficient detail to allow suppliers to identify relevant staff with SMRI. Although we appreciate that suppliers may deploy a varied range of business models and internal governance structures, we would not generally expect a large number of a supplier's staff to fall within the scope of the requirement.

1.96. **Implementation:** In complying with this requirement, our expectation is that suppliers will make prompt written notifications of changes by e-mail to Ofgem. Notifications should be made either to the Ofgem Supplier Account Manager, where a supplier has a Supplier Account Manager, or otherwise to Ofgem's supplier inbox (at the e-mail address: supplier@ofgem.gov.uk).

Customer interactions with administrators

Stakeholder views

1.97. Most respondents were supportive of the intent of the proposal but questioned whether it would be effective in practice. A few respondents supported the policy, recognising the negative experiences that some customers of failed suppliers have had in the aftermath of the failure.

1.98. A few respondents were keen to understand the legal impact Ofgem believe this requirement will have, and suggested we share any legal advice in relation to the proposed measure.

1.99. Most did not support the policy as they thought it would be ineffective and some suggested the costs of contract changes would outweigh the benefits for consumers. Some thought it was inappropriate to try and regulate insolvency practitioners through energy supplier contracts. One stakeholder raised concerns that we did not recognise the set of duties that existed under the insolvency framework or the practical challenges of dealing with a company in administration.

1.100. A few suppliers suggested the administrative burden of implementing the new requirement would be significant. However, others felt that as the contract change would not be disadvantageous to customers there would be no need to notify them of the change – this would suggest the administrative costs would not be material.

1.101. Most respondents were supportive of the suggestion that Ofgem should work with relevant insolvency bodies to ensure consumers are protected as part of energy supplier insolvency processes. Other suggestions included using our consumer law powers.

Our view

1.102. We consider consumers would benefit from a consistent approach when it comes to energy debt collection practices. We do not consider that administrators should have any greater rights than a licensed energy supplier in the way they pursue debt and should not be adopting practices which could be considered more aggressive than the approach a licensed supplier would be required to adopt.

1.103. We appreciate that some of these issues have arisen due to the particular circumstances of a supplier's insolvency[15], and understand that insolvency practitioners have their own obligations and regulatory framework. Our aim is not to interfere with insolvency practitioners' rights and responsibilities[16], nor to dismiss the practical challenges that can arise in the context of a supplier failure that can make it difficult to secure a positive and satisfactory experience for consumers. We do, however, want to provide a measure of additional protection for consumers to ensure there are clear minimum standards they can rely on if a supplier to whom they owe money fails.

1.104. Our understanding is that any conditions of a failed supplier's licence do not continue to bind the supplier after its licence has been revoked. However, the rights and obligations of a former licensee in administration, in relation to customers, will primarily depend upon the terms of the former licensee's supply contracts with those customers. We think it is appropriate that provisions around the collection of debt in the supply

[15] The quality and availability of data, metering and customer account information can vary by supplier and make it more or less difficult for an insolvency practitioner to speedily and accurately issue final bills.
[16] Insolvency practitioners have duties as officers of the Court and must act in accordance with any quasi-judicial, fiduciary or other duties that they may be under, as well as the Insolvency Practitioner Code of Ethics.

licence be reflected in consumer contracts, and the administrator should have regard to these terms in their debt collection practices.

1.105. In general, we intend to work with insolvency practitioners and the Insolvency Service to increase awareness of the obligations administrators are expected to meet, and explore other opportunities to work together.

Administrative burden

1.106. We do not consider that a change to customer contracts to reflect the new requirement would represent a unilaterally disadvantageous variation to the customer's terms and conditions. As a result, we do not consider it would necessarily require a specific communication to be sent to each consumer. We therefore do not believe that there will be a significant administrative burden for the majority of suppliers. However, we recognise that for some there could be costs associated with updating terms and conditions, and associated documentation.

1.107. We will take into account that some suppliers may need additional time to make the required changes. We will take into consideration that some suppliers may seek to align updates to documentation to avoid multiple changes, to help keep any associated costs to a minimum. However, our view is that the majority of suppliers will be able to update their contract terms for when the proposal is implemented.

Enforceability

1.108. We do not directly regulate administrators. However, we have powers to enforce consumer protection rules. When a supplier fails we engage with the appointed insolvency practitioner where appropriate to ensure former customers of the failed supplier are treated fairly.

1.109. Where we have significant concerns we would expect to raise these with the insolvency practitioner in the first instance and, where appropriate, could make complaints to relevant accreditation and regulatory bodies. We may escalate a complaint through formal channels within the insolvency practitioner's organisation, or consider a referral to the Insolvency Service or other appropriate regulator.

Customer book sales

Stakeholder views

1.110. Respondents were generally supportive of our proposals regarding customer book sales. However, some suggested that Ofgem should publish guidance setting out scenarios for when and how Ofgem would take action in the event of a breach of the licence conditions, and the point at which suppliers are expected to notify Ofgem, as the current drafting could be interpreted in different ways. A couple of respondents were not clear how Ofgem would determine whether a trade sale would increase the risk of cost mutualisation.

1.111. Two respondents were concerned that the current drafting may delay or disrupt transactions which may benefit consumers. It was highlighted that the requirement to notify Ofgem is broad in nature and Ofgem should not need to be made aware of all transactions, but only those that relate to suppliers in financial difficulty or raise the risk of supplier failure and associated mutualisation.

1.112. Another respondent said that Ofgem has previously aimed to make commercial exits the norm in the retail market, rather than SoLR events, and it should be careful not undermine this intention. Another warned that any restriction by Ofgem of a customer book sale could be the mechanism that leads to a supplier going into administration, resulting in increased costs on the industry and ultimately the consumer.

Our view

1.113. We understand that stakeholders would like more clarity in relation to the notification element of the licence condition and have made changes to reflect this. We do not intend to publish scenarios outlining exactly when Ofgem would seek to intervene as this would depend on a number of factors as well as licensees' compliance with other licence conditions.

1.114. We have considered whether the current licence drafting could potentially delay or disrupt transactions that may benefit consumers, and we do not think this will be the case. We have already outlined at a high level the circumstances that might give rise to concerns, and which we may consider warrant intervention. However, we expect this would rarely be the case, and we would not in any event intervene in commercial transactions that are in the best interests of consumers. We have a strong preference for

orderly market exits. Suppliers should engage early with Ofgem in relation to any transactions they are considering.

SoLR commitments

Stakeholder views

1.115. Most respondents were supportive of the proposals, on the understanding that the SoLR would only be expected to honour commitments made based on the information it had when making the commitment. One respondent said that if this was not the case, then it would dissuade many suppliers from bidding and could result in the SoLR who had committed to honour all credit balances themselves becoming financially unstable.One respondent suggested that Ofgem should clarify what taking "all reasonable steps" to honour the commitment made means in the context of inaccurate data being provided to them. Some respondents wanted confirmation that Ofgem accept that there can be circumstances where honouring commitments is not possible, and to exercise discretion in its engagement with SoLRs who are facing challenges due to data or other issues outside of their control.

1.116. One respondent said that Ofgem should explicitly state in the licence condition that the requirement to take all reasonable steps to honour any commitment made is based on the information available at the time, whereas another said that the inclusion of "reasonable steps" is sensible as this would mean that if data is significantly flawed, this would fall outside of the commitment given.

1.117. One respondent commented that the proposed change to the terms of deemed contracts licence condition, SLC 7.12(b), requires suppliers to extend the length of their terms and conditions of supply, to the detriment of many customers for whom the sight of pages of even the most simply worded document is daunting. They were therefore against its inclusion in the package as they felt such a contract term has the potential to cause negative unintended consequences.

Our view

1.118. We are aware that in past supplier failures there have been instances where, due to inaccurate data provided by the failing supplier, credit balances have been higher than expected or other information available at the time of the SoLR process has been

inaccurate. We agree that a SoLR should only be responsible for commitments it made based on the information available to it at the time any commitment was made. For example, a SoLR who agrees to absorb all credit balances would still be able to make a Last Resort Supply Payment claim for additional unexpected costs, such as if the credit balances are higher than anticipated. We consider the inclusion of "all reasonable steps" reflects that SoLRs may face challenges due to poor data quality or other issues outside their control, and there may be circumstances where honouring commitments is not possible.

1.119. We do not agree that SLC 7.12(b) requires suppliers to lengthen the terms and conditions of their customer contracts. Our view is that this requirement will promote certainty for customers on their legal rights when a SoLR in appointed by incorporating commitments made by the SoLR into their customer contracts. This would provide a clearer route for enforcement, by consumers themselves if appropriate, of the SoLR's commitments and will reduce the need for consumers to rely upon the regulator to take enforcement action to secure their credit balances.

Appendix 2: Response to milestone assessment guidance

Stakeholder feedback

1.1. As noted in the milestone assessment stakeholder feedback in Appendix 1, one respondent stated that 15 working days to respond to a milestone assessment RFI may be insufficient as suppliers may need to obtain data from 3rd party service providers. They suggested that 4 weeks would be appropriate, with scope for flexibility over the holiday periods. We agree with this and have amended the guidance to reflect that we will generally request a response to the milestone assessment within 20 working days of issuing an information request.

1.2. A couple of respondents requested clarification on what happens when a supplier already above a customer number threshold dips below the threshold and then passes it again. This is clarified in the below section.

1.3. One respondent said that Ofgem should consult formally on Appendix 3 of the statutory consultation (milestone assessment guidance) as they felt that insufficient attention was drawn to it in the consultation. We believe that the milestone assessment guidance was given sufficient prominence as we received a range of comments from stakeholders on its content. Therefore we disagree that there is a need for a separate consultation.

Changes and clarification

1. In the statutory consultation milestone assessment guidance, we said that we would generally expect a supplier to notify Ofgem at least 30 calendar days (excluding bank holidays and weekends) before they reach the point of assessment. We have now removed the proposed requirement for suppliers to notify Ofgem a reasonable time before they anticipate reaching their first 50,000 and first 200,000 domestic customers. Therefore suppliers will only be required to notify Ofgem when they reach the threshold, which we would expect to be within 10 working days from when the milestone was reached.

2. We also said that if a supplier falls below the relevant customer threshold, it would be required to notify Ofgem when it exceeds the threshold again. To clarify, this is not the case. Suppliers are only required to notify Ofgem when they reach the relevant threshold for the first time.

3. We have decided to change the email address that suppliers must send milestone notification to. Notifications must be sent to supplier@ofgem.gov.uk.

4. In the statutory consultation, we said that Ofgem would generally request a response to the milestone assessment within 15 working days of sending the request. Following stakeholder feedback, we have changed this to 20 working days.

Appendix 3: Financial responsibility principle draft guidance document

1. Introduction

1.4. We are consulting on our guidance to the Financially Responsibility Principle (SLC 4B1 to 4B3). This is an enforceable overarching rule requiring suppliers to take action to minimise the extent of costs to be mutualised in the event of failure. This guidance is relevant for all domestic and non-domestic suppliers.

1.5. Ofgem may update this guidance from time to time. Suppliers are therefore responsible for keeping up to date with the latest version. We remind all suppliers that this guide does not modify or replace the conditions in the gas and electricity supply licences. Neither is it an exhaustive list of supplier obligations. Suppliers should continue to refer to the conditions outlined in the most recent versions of the gas and electricity supply licences.

1.6. We are seeking stakeholder views on the proposed content of the guidance document by 22 January 2021. Please send your response to licensing@ofgem.gov.uk.

2. What is Financial Responsibility Principle?

2.1. We want to ensure that the costs of a supplier's business are borne by the business itself, rather than being subsidised, on its failure, by its competitors. Features of the retail energy market mean that some supplier costs risk being mutualised upon its failure if they are not managed responsibly while the supplier is trading. Customer credit balances, network charges and environmental and social scheme obligations are examples of this.

2.2. In line with the overarching themes of the Supplier Licensing Review, we want suppliers to bear an appropriate share of their risk, including by adopting responsible financial management approaches to minimise the extent of cost mutualisation in the event of their failure.

2.3. The Financial Responsibility Principle will act as an over-arching obligation – supporting one of the key aims of the Supplier Licensing Review by ensuring suppliers act in a

more financially responsible manner and take steps to bear an appropriate share of their risk.

3. Implementation

3.1. The Financial Responsibility Principle will be introduced on 22 January 2021, in line with several other changes being made by Ofgem as part of the Supplier Licence Review. As this is a principle-based requirement, there will be no set timeframes for requesting information. We will, however, be looking at ways to gather data for an initial assessment of the market landscape.

3.2. We are aware of the burden that information requests can have on a supplier. Wherever possible, we will seek to use information that we already gather from other regulatory procedures or tools we already have in place, rather than request new information. This could include, for example, assessing information we gather as part of our general market monitoring or using information gathered via milestone/dynamic assessments, previous information requests, account management engagement, and/or information contained in Consolidated Segmental Statements. We would also expect to request any additional information in a consistent format. We do not expect the introduction of this principle to result in significant burden to a supplier, especially those who regularly provide clear and accurate information to Ofgem, and that are already acting in a financially responsible manner.

3.3. We appreciate that suppliers' business models will vary, and we plan to approach monitoring in a risk-based and proportionate way. Many factors will be taken into consideration, such as size of organisation and customer base/type. Our monitoring approach for non-domestic suppliers will be proportionate to the risk of mutualisation – as credit balances for non-domestic customers cannot be recovered through Last Resort Supply Payments, and in any event tend to be proportionately lower than domestic balances, our monitoring may be lower for non-domestic suppliers.

4. Expectation of suppliers

4.1. The Financial Responsibility Principle requires suppliers to have adequate financial arrangements in place to meet its costs at risk of being Mutualised.[17]

4.2. As a minimum, we would expect that suppliers would be able to provide evidence that they have:

- plans in place to meet their financial obligations under government schemes by relevant dates;[18]
- effective processes, that are consistent with existing licence requirements,[19] for example setting direct debit levels and for checking and returning customer credit balances;[20]
- sustainable pricing approaches that allow them to cover their costs over time, or if they are pricing below cost that the risk sits with investors and not consumers. We will need to see evidence that suppliers can finance their overall business plans;
- robust financial governance and decision-making frameworks in place; and
- the ability to meet their financial obligations while not being overly reliant on customer credit balances for its working capital.

4.3. We would expect suppliers to be able to demonstrate they are meeting these minimum requirements under the principle. How a supplier does this and the evidence they provide will vary, but we expect suppliers to provide plans and supporting evidence, for example cash flow projections, budgets, guarantees or proof of investments as appropriate. If a supplier is acting in a financially responsible manner this should just require them to report on the arrangements they have in place and provide evidence to substantiate these plans.

[17] "Mutualised" is defined in the Licence as meaning one or more market participants other than the licensee bearing costs incurred by the licensee, which may include Customer Credit Balances and costs incurred by the licensee under government environmental and social schemes, by virtue of regulatory mechanisms.
[18] The Financial Responsibility Principle covers both costs that could be mutualised following supplier failure and those that may be mutualised if paid late. For instance any Renewables Obligation buyout fund payments that are not made by the end of October will be mutualised whether or not the supplier has failed.
[19] For example SLC 0 - "The Standards of Conduct", SLC 31F/31I – "Informed tariff and consumption choices", SLC 27.15 – "Setting Direct Debits", and SLC 27.16 – "Refunding customer credit balances on request".
[20] Under Standard Licence Obligations 27.15 and 27.16.

4.4. As highlighted above, we appreciate that there will not be a one-size-fits-all approach to how a supplier should run its business. However, where we see poor practice and potential risk, we would look to use our powers to intervene to protect consumers and reduce potential cost mutualisation for the rest of the GB energy market.

4.5. If we have concerns regarding the arrangements a supplier has in place, we may seek further engagement, and if appropriate may agree a suitable reporting arrangement. Any additional reporting would be proportionate to the risk of mutualisation and assessed on a case-by-case basis.

4.6. A supplier's financial circumstances will fluctuate over time. In order to adhere to the Financial Responsibility Principle, we expect all licensees to be open and transparent with us on an ongoing basis. We expect that suppliers should also regularly review and update their finance and growth plans. Where suppliers identify current or potential future financial difficulties, we strongly encourage suppliers to engage with us early.[21]

4.7. Our enforcement guidelines set out the approach we take to enforcing against all licence conditions, including Financial Responsibility Principle.

5. Cost Mutualisation Phase Two

5.1. The Financially Responsible Principle will help to ensure that suppliers adopt sensible practices in managing their costs. In doing so, it will raise standards among poor performing suppliers without placing an undue burden on suppliers that are already acting in a responsible manner. By itself, we consider it will improve our ability to take action to address poor supplier behaviour. However, we are considering whether further requirements are necessary.

5.2. In 2021, Ofgem plans to consult on prescriptive measures to ensure suppliers take appropriate steps to reduce the likelihood and extent of cost mutualisation. Introducing the Financial Responsibility Principle at this stage will deliver positive changes for consumers in the short term that can be supplemented later should we decide that is

[21] In accordance with our proposed open and co-operative principle (SLC 5A) we would expect a financially responsible supplier to seek early engagement with us to communicate, and reassure us of, significant changes to its financial position or its approach to financial management.

warranted. We will review and update this guidance as appropriate, and to align with our thinking on more prescriptive measures.