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Dear Supplier Licensing Review Team,

Statutory Consultation - Supplier Licensing Review: Ongoing requirements and exit arrangements

Thank you for the opportunity to respond to Ofgem's statutory consultation on its proposals for the ongoing monitoring of suppliers and improving market exit arrangements which forms part of its wider Supplier Licensing Review.

As we have shared with Ofgem previously, we think the review of supplier entry, ongoing monitoring and exit arrangements is timely given the number of supplier insolvencies in recent years, in most cases in a relative disorderly manner. These insolvencies have had a significant impact on the market, causing detriment not only to customers of the failed supplier, but also to customers of other suppliers who bear the costs of refunding credit balances and other mutualisation. The risk of insolvencies is heightened as a result of the financial pressures already facing suppliers (our analysis suggests that all but one of the suppliers with over 50k customers made a loss in their last reported results) coupled with the wider economic impacts of the Covid-19 lockdown.

We understand that insolvencies are a normal part of all competitive markets. Competition between market participants, whether through price, service or innovation requires some level of risk taking – including the risk of insolvency. We therefore believe, as we have highlighted previously, that Ofgem's objectives for the review of ongoing monitoring should focus on ensuring that markets function efficiently and the impact of insolvencies on consumers and other market participants is proportionate. As far as is practicable, it is important that shareholders and/or business owners bear the costs of insolvency as this in turn will discipline the risk management of the business.

<u>Protection of customer credit balances and government scheme liabilities</u>

We are disappointed that Ofgem has decided to delay implementing the previously consulted on prescriptive proposals to require suppliers to protect customer credit balances and government scheme liabilities to prevent cost mutualisation, and at this point to rely instead on a new Financial Responsibility Principle, not previously consulted

upon and for which there is little analysis (eg in the form of a revised impact assessment) of likely effectiveness. We understand that while most stakeholders were supportive of Ofgem's original proposals, there were divergent views in a number of areas and Ofgem has therefore decided to consider this area in more detail and to consult further in due course. While we understand Ofgem's wish to undertake further consultation, we believe the concerns raised by some suppliers have been over-stated, and we urge Ofgem to move forward quickly with this activity to ensure that the potential impact on consumers of any new supplier insolvencies (which many observers suggest may be exacerbated by the current Covid crisis) can be mitigated. We comment further on this in Annex 1

Remaining proposals

We have provided comments on Ofgem's remaining proposals in Annex 1 to this letter, together with suggested amendments to the draft licence conditions in Annex 2. We would highlight the following points:

- Ofgem's new SLC 27.8A which requires suppliers to amend terms and conditions to reflect existing obligations around recovery of charges from customers has the potential to create unintended consequences. In particular:

  - The revised drafting states that suppliers cannot 'demand or recover charges' unless or until suppliers have completed a number of other actions. However, a bill is described in SLC 1 as a "demand for payment", so the revised drafting would appear to create new constraints on when a supplier can issue a normal bill to a customer to recover charges due to them.
  - The current drafting fails to recognise that with regard to SLC 27, the ability to offer services and ascertain ability to pay will in most cases rely on engagement from the customer.

  We are not convinced of the need for the additional drafting which appears to be introducing additional guidance to existing licence conditions. If Ofgem can demonstrate the need for the additional drafting and retains it, a number of amendments are required to avoid unintended consequences.

- We agree that for the new Operational Capability, Open and Co-operative and Financial Responsibility principles, responsible suppliers should have no concerns as they will already be meeting the obligations. However, it is important that when Ofgem undertakes checks of supplier compliance with these obligations it takes a risk-based approach, to avoid placing unnecessary administrative burdens on otherwise responsible suppliers.

- While we are disappointed that Ofgem is proposing to implement the Customer Supply Continuity Plan (CSCP) for all suppliers (as opposed to a more targeted approach), we welcome the amendments to content and timescales which will mitigate the disproportionate impact on large suppliers we previously highlighted. Ofgem appears to be suggesting a three or four month implementation for the initial CSCP, and we ask that Ofgem offers the latter to ensure suppliers can complete this without impacting business as usual activity. It is also important that Ofgem includes guidance on the content of CSCPs either in the licence conditions, or in a separate document clearly signposted from the licence conditions (rather than expecting people to refer back to the consultation document). Without this, there is a clear risk to the quality and usefulness of CSCPs.

There are two areas where Ofgem is introducing new proposals at the statutory consultation stage that have not been consulted on in any previous part of the process:

the new Financial Responsibility Principle, and the requirement to include in deemed terms and conditions obligations to honour credit balances as part of the Supplier of Last Resort process. As a general principle, we think it important that any significant policy proposals are consulted on in advance of the statutory consultation to limit the risk of unintended consequences.

If you have any comments or queries on any aspect of this response, please don't hesitate to contact me.

Yours sincerely,

Richard Sweet
Head of Regulatory Policy

Annex 1

SUPPLIER LICENSING REVIEW: ONGOING REQUIREMENTS AND EXIT ARRANGEMENTS - STATUTORY CONSULTATION – SCOTTISHPOWER RESPONSE

We have set out below our feedback on a number of the proposals in Ofgem's consultation with any proposed amendments to the draft licence conditions to accompany these comments provided in Annex 2.

1. Further consultation on prescriptive cost mutualisation protections

We are disappointed that Ofgem has decided to delay implementing the previously consulted on proposals to require suppliers to protect customer credit balances and government scheme liabilities to prevent cost mutualisation. As we set out in our response to Ofgem's September policy consultation, we welcomed Ofgem's proposals but believed suppliers should be required to protect 100% of these liabilities rather than the 50% proposed by Ofgem.

We understand from engagement with Ofgem and the summary in the consultation document, that while most responses were supportive of the proposals, there were divergent views in a number of areas across stakeholders and therefore Ofgem has decided to consider this area in more detail and will consult further in due course. While we understand Ofgem's wish to consider further, we do not believe that the issues raised by stakeholders should prevent Ofgem proceeding:

- **Scope of protections:** We agree that Ofgem needs to weigh up carefully the merits of 50% vs 100% protection (or a phased approach), whether the protections apply to all credit balances (domestic and non-domestic) or just domestic, and which government schemes should be included, but these are the types of trade-off Ofgem is required to make all the time.

- **Impact on availability of fixed direct debit (DD):** We think the risk of fixed DD payment options being withdrawn from the market is over-stated. Whilst it is possible that a few financially precarious suppliers may prefer not to offer fixed DD payment so as to avoid having to protect their customers' credit balances, we do not believe this would apply to the vast majority of suppliers who will simply reflect the (relatively small) cost of protection in their tariffs. Any customers who are affected by withdrawal of the DD option are likely to be engaged and able to switch to another supplier. Ofgem should be seeking to protect the interests of consumers as a whole, not individual suppliers.

- **Definition of credit balances:** Again, there may be wrinkles with any definition that Ofgem adopts, but this should not be a reason not to proceed.

- **Implementation and compliance monitoring:** We agree that three to six months is probably too ambitious but see no reason why Ofgem should not go for 12 months or a staged implementation. As regards compliance monitoring, it should be for the supplier to demonstrate to Ofgem that it is meeting its obligations, and it may be helpful for Ofgem to issue guidance in due course on what evidence it would expect to see.

We urge Ofgem to move forward with this activity quickly to ensure that the potential impact on consumers of any new supplier insolvencies can be mitigated. Although some suppliers operating unsustainable models have left the market in the last 2-3 years, we believe the risk of further such insolvencies remains, and indeed many observers suggest it may have been exacerbated by the current Covid crisis.

We do not believe the insolvencies over the last 2-3 years have effectively removed all suppliers taking unsustainable approaches to financial risk management from the market and furthermore the risk that the other suppliers may be tempted to adopt similar behaviours in future remains present.

Ofgem's approach to mitigation at this point is to introduce a new "Financial Responsibility Principle". While we welcome Ofgem taking some action in this regard in advance of more prescriptive rules, we are not convinced that a principle will provide much protection above existing powers held by Ofgem – and Ofgem has provided little supporting analysis (eg in the form of a revised impact assessment (IA)) of its likely effectiveness. Indeed, Ofgem references a number of existing licence conditions within its expectations of what suppliers should be considering in meeting this new proposed licence condition, including those relating to setting customer Direct Debits, providing refunds, and obligations relating to making Government Obligation payments on time.

Our particular concern is that where a supplier is in financial difficulties, any protections in place under this new principle to mitigate mutualisation will likely be the first to fall away as the supplier acts to remain viable. The amount of costs being mutualised will therefore likely be little changed compared to the situation if Ofgem takes no action. While as a responsible supplier we are satisfied that we can demonstrate that we are meeting this principle, we do have concerns that this principle will simply add further administrative burden to responsible suppliers with little benefit against the risk it is aimed at mitigating. We would also note that Ofgem has not consulted in detail on such a principle prior to this statutory consultation stage, which is not in line with usual regulatory process for new policy proposals which would allow for detailed consultation at an earlier stage to ensure stakeholders can provide views. Furthermore, Ofgem has failed to revise its IA to demonstrate how and why the introduction of this financial responsibility principle will deliver consumer benefits. In the absence of such an IA it will not be possible to evaluate the success or otherwise of this new licence obligation. It is therefore essential that Ofgem properly consults on consumer protections against cost mutualisation arising from supplier insolvencies. As part of this it should seek to quantify the risk of consumer detriment at present and in future, justifying whether or not more prescriptive regulations are required.

2. A proportionate and risk-based approach to supplier monitoring

Ofgem has highlighted that for a number of the new requirements, responsible suppliers should have no concerns as they will already be meeting the obligations introduced by the new licence conditions. This is the case in particular for the new Operational Capability, Open and Co-operative and Financial Responsibility principles. We are not opposed to the introduction of these new proposals where Ofgem believes there are gaps in its powers to take action where a supplier is acting irresponsibly or showing signs of financial distress. However, we believe there is a risk that these new obligations could impose non-trivial burden on responsible suppliers if Ofgem does not implement monitoring in a proportionate manner, ie requesting evidence of approach to compliance only where it has evidence that flags concerns with a supplier's conduct.

In this regard, we believe it important that Ofgem's assessment of compliance with this obligation is undertaken using a risk-based approach (as Ofgem notes is its intention in a number of places in the statutory consultation) to avoid significant additional administrative burden on otherwise responsible suppliers.

3. Relevant matters to be taken account of for assessing Fit and Proper status

In our response to the October policy consultation, we highlighted concerns regarding the inclusion of compliance activity an individual has been involved in as well as enforcement

activity within the “relevant matters” that suppliers must have regard to in assessing fit and proper status (now within part f of SLC 4C.3). We retain the view that this should not be included given the regular nature of compliance activity undertaken by Ofgem, and in particular proactive activity where there may be no indication of non-compliance, and have proposed revised drafting in Annex 2. If Ofgem retains this drafting, then we would note that we expect that in most cases, suppliers are likely to only include compliance activity instigated by Ofgem on a reactive basis and where the action was closed with documented evidence of consumer detriment or the need for remedial action to be taken by the supplier.

4. Requirement for a Customer Supply Continuity Plan (CSCP)

We are disappointed that Ofgem is proceeding with implementation of a CSCP (formerly referred to as a Living Will) particularly for all suppliers. However, we welcome Ofgem’s amendments regarding the content of a CSCP, which we believe reduces the burden and cost on large suppliers, which for the proposals in the October policy consultation we viewed as being disproportionate to the potential benefit. We also welcome the decision not to require suppliers to publish their CSCP and instead require suppliers to provide their CSCP on request to Ofgem. We agree with Ofgem that this would include as part of the new Milestone Assessments and Dynamic Assessments as this may act to mitigate the risk of a CSCP being out of date due to it having dropped down the priority list for suppliers at risk of failing.

There may also be merit in Ofgem continuing to assess additional options to mitigate the potential of a disorderly exit, including working closely with third party organisations regarding ways to complement and help validate failed supplier data.

We also have a number of comments on the draft licence conditions, the suggested content for a CSCP and proposed implementation timescales, which are set out below.

<u>Draft Licence Conditions</u>

We note that Ofgem is not currently providing any guidance on the content of a CSCP within the licence conditions or suggesting it plans to publish any guidance outside of the licence conditions. While existing suppliers at this point in time will be clear on the expectations of the content of the licence conditions based on the detail published in the consultation document on pages 52 and 53, this detail will not be as readily visible to new suppliers entering the market or indeed to any new staff at existing suppliers. We believe this is likely to risk the quality and usefulness of the CSCPs of those suppliers, and potentially undermine the benefit of this proposal.

Perhaps Ofgem intends providing guidance to new entrant suppliers as part of the supplier licensing process to mitigate this risk, however it is not clear this is the case from the consultation document and, in any case, this would not mitigate the risk of a change in staff at existing suppliers. We therefore think Ofgem should include guidance on the content of CSCPs either within the licence conditions, or as clear guidance signposted from the licence conditions.

Ofgem’s drafting refers to the CSCP being kept up-to-date “at all times”. While we understand the intent behind this drafting, we ask that Ofgem recognises that for some changes, there may be a short lead time from the point of the change to updating the CSCP. This could be the case for example where a significant change in system or process would require a change to the CSCP regarding how customer details would be extracted and accessed. We would suggest that as long as a supplier has recognised the need for the CSCP to be updated, and has commenced the process to do so, then this would not be a breach of this requirement.

Content of a CSCP

As noted, we welcome the amendments regarding the content of a CSCP as set out in the consultation document compared to those previously consulted on. The proposals cover a number of customer account information data points which we agree will potentially support a smoother onboarding of customers to a new supplier in the event of a SoLR event. From our experience of acting as a SoLR, we think there are a small number of additional points that Ofgem should also require to be considered within a supplier CSCP to support this process. This includes:

- Under supplier information: meter type information (to ensure SoLRs have information on smart and dumb meters, and those with restricted meters)
- Under customer account information and/or data: processes for accessing supply and billing address information, details of last bill and meter read information for billing and for settlement (to support SoLRs in setting up customer accounts accurately)

Implementation Timescales

Taking on board feedback, Ofgem plans to allow for one additional month for suppliers to have in place their initial CSCP which adding to the previous one to two-month timescale would allow a three or four-month implementation timescale. We ask that Ofgem allows the latter, to support suppliers in producing the initial CSCP with as little impact on business as usual activity as possible. We can recognise Ofgem's aims to have this mitigation in place as early as possible, but we would note that if a supplier were to fail during this implementation period there would likely be part of a living will in place that would support a more orderly exit from the market.

5. Independent Audits

Ofgem's proposals for the new requirement to enable it to compel suppliers to undertake an independent audit where areas of concern arise remain largely as proposed at the policy consultation stage. We continue to be supportive of Ofgem's proposals but would make the following points regarding the revised draft licence conditions.

- Ofgem confirms that it will make use of this new power in a proportionate manner and only where there are significant concerns regarding a supplier's financial resilience or customer service arrangements, or where the supplier fails to comply with the new obligations under Ofgem's Milestone and Dynamic Assessment proposal. We had previously welcomed this confirmation but noted that the drafting of the proposed licence conditions appears significantly broader than this and could introduce the potential for Ofgem to require audits simply to test supplier compliance of an obligation even where no concerns around the supplier actions exist.

  While Ofgem has taken on board this point and added drafting to the licence conditions regarding the circumstances when Ofgem would compel an audit, we do not believe the revised drafting removes the risk we had highlighted at policy consultation stage. We ask that further refinement is made to ensure it reflects Ofgem's intentions and ensure that the circumstances where Ofgem could use this new power are limited to the situations set out in the consultation document.

- Ofgem has added text to the licence conditions covering a number of procedural points around the audit process. This includes that the audit must be undertaken in line with Terms of Reference supplied by Ofgem and that suppliers must provide a copy of the report to Ofgem by a deadline set by Ofgem. We are generally in agreement with these additions, however would note that we consider that suppliers would normally have the

opportunity to provide feedback to Ofgem on draft terms of reference, including on the timescales for completion and provision to Ofgem. We think it is important that Ofgem allows for such engagement in advance of agreeing a final Terms of Reference to ensure the content is feasible and ensure suppliers can deliver on its requirements alongside continuing to appropriately service its customers.

We have suggested alternative drafting in Annex 2.

6. Monitoring and Reporting Requirements

We have no comments to make on the proposals to require suppliers to notify Ofgem of any changes to the matters set out in the new SLC 19AA other than to note that we would generally intend to provide such notification through the account manager process which is managed within our Regulation team, and that we consider this would be sufficient to meet the obligations set out here. We may in addition in some cases provide additional notification directly to other individuals in Ofgem where we deem it appropriate.

7. Exit Arrangements

Requirement to include SLC 27 and SLC 28B requirements in consumer terms and conditions

Despite having reservations regarding whether the changes will actually act to improve the behaviour of administrators, we have no concerns regarding the intent behind Ofgem's proposals to require suppliers to update customer terms and conditions to reflect a number of existing licence conditions. This would not be a detrimental change for customers and there would therefore be no need to notify them of the change; and the costs to make this change are not material.

We do however have some concerns with the amendments Ofgem has made to the draft licence conditions since those shared at policy consultation stage. In particular, we think the terminology used by Ofgem in the additional drafting (which we understand has been added to provide more detail on the terms and conditions needed to be included) is confusing at the least, and at worst could create unintended consequences in relation to the existing licence conditions. We do not believe this is Ofgem's intention and ask that Ofgem either removes the additional drafting in the licence conditions, which as we set out below we do not see evidence that it is needed, or amends it to remove these potential unintended consequences.

In particular, the revised drafting for SLC 27.8A states that suppliers cannot demand or recover charges unless or until suppliers have completed a number of other actions, including:

- where a customer is in or at risk of payment difficulty, offering a range of services for repayment and allowing time to make payment, and taking steps to establish a customer's ability to pay and setting instalments accordingly
- taking all reasonable steps to issue a final bill
- that any of the costs that relate to the recovery of Outstanding Charges, Other Outstanding Charges, or any other debt are considered proportionate

In SLC 1, Ofgem's own definition of a bill references it as a "demand for payment"[1] while both Outstanding Charges and Other Outstanding Charges are both defined as Charges that have already been demanded of a customer[2]. The drafting of the new SLC 27.8A therefore appears

[1] Bill means an invoice or a demand for payment or any other instrument of the same or similar character and purpose

[2] Outstanding Charges means the amount of any Charges which are due to the licensee from a Domestic Customer, have been demanded of that Domestic Customer by the licensee in Writing at least 28 days previously and remain unpaid

to create new constraints on when a supplier can issue a normal bill to a customer to recover charges due to them, ie act to demand payment for charges that are due. We would also highlight that in most cases this communication is the trigger point for a customer sharing information that allows a supplier to identify the actual or potential payment difficulty, and to assess ability to pay.

Within the consultation document, Ofgem states the reason for adding this additional text within the draft SLC 27.8A that concerns us, is that it believes that the additional detail is needed to ensure the obligations in the existing licence conditions are reflected in the terms and conditions. We do not consider that this additional detail is needed where it is not within SLC 27 or 28B itself already, and would strongly urge against Ofgem creating what could be argued to be additional guidance relating to the interpretation of SLC 27 and 28B. We do not think this is appropriate and Ofgem's provides to evidence on why it needs further narrative in the licence conditions to those consulted on at policy consultation.

If Ofgem continues to believe that the additional detail is needed to achieve the aim of this licence condition, then it must as a minimum ensure that it removes the potential for unintended consequences and constraints. We believe in referencing the "demand" and "recovery" of charges, Ofgem is referring to debt recovery actions by suppliers rather than the initial communication to a customer of any outstanding charges. We believe that it is important that Ofgem amends the drafting of proposed SLC 27.8A to ensure it does not inadvertently amend the existing obligations placed on suppliers and we have proposed alternative drafting in Annex 2 in this regard.

<u>Requirement to update deemed terms and conditions to include any commitments to honour credit balances within a Supplier of Last Resort (SoLR) event</u>

Ofgem has introduced a new requirement to require deemed terms and conditions to include a clause committing a SoLR to provide customer credit balances to consumers where it has committed to do so in its SoLR application.

On review of Ofgem's rationale for inclusion of this new obligation and the draft licence condition, Ofgem states that this amendment is required to:

- *"promote certainty for customers on their legal rights when a SoLR is appointed";*
- *"provide a clearer route for enforcement…..of the SoLR's commitments";*
- *"supplement the duty for SoLRs to honour commitments made to Ofgem when seeking to be appointed as the SoLR"; and*
- *"clarify the SoLR's duties for the failed supplier's insolvency practitioners and increase the likelihood of a SoLR securing restitution, through the failed supplier's liquidation, for the costs that it incurs by honouring customer credit balances".*

We welcome Ofgem's activity in this area to support suppliers in their engagement with administrators of a failed supplier, which we know from personal experience can be particularly challenging. While in past consultations Ofgem has referenced the subrogation process as a route for suppliers to recover credit balance costs through the liquidation process, we note that Ofgem now makes no reference to this and instead appears to be suggesting restitution, and this is one of the arguments for implementing this new requirement. There is however little detail within the consultation setting out Ofgem's evidence that the principle of restitution provides suppliers with the ability to recover credit balance from administrators.

In terms of the draft licence condition itself, while it could appear to duplicate the new obligation placed on SoLRs to honour commitments made during the SoLR process, if it supports suppliers in limiting the costs that are placed on energy consumers as a result of supplier failure then we are comfortable with the additional obligation relating to updating of deemed

terms and conditions. We are however not convinced that this will necessarily be the case, as it will simply document in terms and conditions the commitment by a SoLR, rather than linking this commitment to discharging any obligation on the failed supplier or its administrator.

We would also note that Ofgem has not previously consulted formally or informally on this proposal in any of the three Supplier Licensing Review consultations or other engagement in the process. As a general principle, we think it important that any significant policy proposals are consulted on in advance of the statutory consultation to limit the risk of unintended consequences.

Requirement for SoLRs to honour commitments made in their SoLR submission

Ofgem has retained the proposal to place obligations on suppliers appointed as SoLRs to take all reasonable steps to honour any commitment made during the SoLR selection process. We had previously raised concerns that this may dissuade many suppliers coming forward to be considered as a SoLR given that the SoLR performance is heavily dependent on the quality of customer information received and this is typically unknown when applications are sought to become the SoLR. We accept that the 'all reasonable steps' wording may partially allay such concerns, but if Ofgem proceeds with this proposal we ask that it be explicit in accepting that there can be circumstances where honouring commitments is not possible, and exercise discretion in its engagement with SoLRs who are facing challenges due to data or other issues outside of their control.

Annex 2

SUPPLIER LICENSING REVIEW: ONGOING REQUIREMENTS AND EXIT ARRANGEMENTS: DRAFT LICENCE CONDITIONS SCOTTISHPOWER COMMENTS

Reference	Suggested Amendment	Rationale
SLC 27.8A (Customer interaction with administrators)	27.8A The licensee must ensure that the terms and conditions of each Domestic Supply Contract or a Deemed Contract require it to comply with the provisions of the following standard conditions: • paragraphs 5 to 8 of standard condition 27 (inclusive), and ~~stipulate~~ have the effect that (i) in respect of any current or former Domestic Customer to which this condition applies, debt recovery actions for ~~c~~Charges may not be ~~demanded or recovered~~ taken unless ~~and until it is established that~~ such payment options referred to under this condition have been expressly offered to the customer and they have been given time to make payment, and (ii) debt recovery actions for ~~c~~Charges may not be taken ~~demanded or recovered~~ unless and until ~~it can be established that such~~ the licensee has taken steps to ascertain a current or former Domestic Customer's ability to pay and instalments set accordingly; • paragraphs 17 and 18 of standard condition 27, and ~~stipulate~~ have the effect that debt recovery actions for ~~c~~Charges may not be taken ~~demanded or recovered~~ unless and until ~~it is established that~~ all reasonable steps to issue a final Bill have been taken; and • paragraphs 5 and 6 of standard condition 28B, and ~~stipulate~~ have the effect that debt recovery actions for Charges may not be taken ~~demanded or recovered~~ unless ~~and until it is established that~~ such costs ~~which~~ as are sought to be recovered under this condition are ~~considered~~ proportionate.	As we have noted in Annex 1, we believe the proposed drafting creates unintended consequences, including constraining a supplier from simply issuing a bill to ask a customer to make payment for charges due. We also think there is a risk that the drafting fails to recognise that with regard SLC 27, the ability to offer services and ascertain a customer's ability to pay will in most cases rely on engagement from the customer which the current drafting does not reflect. While we are not convinced of the need for the additional drafting which appears to be introducing additional guidance to existing licence conditions which we think inappropriate, if Ofgem can demonstrate the need for the additional drafting and retains it, a number of amendments are required to ensure it does not create the unintended consequences that we highlight. We have also suggested changes to make the English clearer in two respects: • It is wrong to say 'the licensee must ensure the contract complies with xyz licence condition' unless the licence condition itself refers to the contract. Rather, we think Ofgem means that the contract must require the licensee to comply with the licence condition. • Saying 'stipulate that xyz', implies that xyz must be reproduced pretty much exactly in the contract, which is

Reference	Suggested Amendment	Rationale
		likely to result in unnecessarily convoluted language. We think 'have the effect that' is better as it allows the supplier to adopt alternative (plain English) language provided it has the same effect as Ofgem intends.
SLC 5B (Independent audits)	5B.1 After receiving a request from the Authority to commission an Independent Audit that the Authority reasonably 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, when and in the form requested by the Authority and by the date set by the Authority, a copy of the full audit report.	The previous licence drafting included a reasonableness test for Ofgem and we see no reason why that should be dropped. It is an important safeguard for suppliers to be able to challenge such a request in the event that the request is unreasonable. The '*may be* necessary' wording already gives Ofgem wide discretion such that it does not even need to consider that the audit *is* necessary,
	5B.2 The areas of the licensee's business that the Authority may require to be included in the Independent Audit are ~~may include 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~~ matters covered under Condition 28C, but in each case only where the Authority has evidence to suggest the licensee has breached its obligations.	Saying 'the Independent Audit may include' has the effect of restricting the information the auditor is permitted to include in her report. Rather, we think the intention is to restrict the areas that Ofgem may request to be included in the audit report. Item (c) in the list is at odds with (a) and (b). The first two are areas of the business, whereas (c) describes an inability of the supplier to provide information. The power to require an audit report is intrusive and potentially expensive for the licensee. It is only reasonable therefore that the scope is limited to areas where Ofgem has evidence to suggest a breach of licence obligations. Otherwise Ofgem could use the power in a 'fishing expedition' simply to test compliance, which we do not think is Ofgem's intention.
SLC 4C (Fit and proper persons)	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: […] f) been refused, had revoked, restricted or terminated, any form of authorisation, or had any disciplinary, ~~compliance~~, enforcement or similar regulatory action taken by any regulatory body in any jurisdiction whether as	The requirement to 'have regard to' could be taken to imply that suppliers must attempt to keep records for each of their relevant staff in respect of any 'have regard to' matter. We think it would be inappropriate and unduly onerous to record every episode of compliance engagement with Ofgem. Suppliers routinely engage on compliance matters several times each year with Ofgem, and it cannot be inferred from

Reference	Suggested Amendment	Rationale
	an individual, or in relation to a business in which that person held Significant Managerial Responsibility or Influence.	this that they individuals involved are not fit and proper. We think the higher threshold of enforcement (or similar regulatory action) is sufficient in this context.

ScottishPower
August 2020