

Consultation

Supporting the Market Facilitator: Proposed licence conditions

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Contact:	Madeleine Morris
Team:	System Flexibility
Telephone:	020 7901 7000
Email:	flexibility@ofgem.gov.uk

We are consulting on proposed additions to the Standard Licence Conditions (SLCs) of the Electricity Distribution Licence and the SLCs of the Electricity System Operator (ESO) Licence. These additions would require Distribution Network Operators (DNOs) and the National Energy Systems Operator (NESO) to comply with the Flexibility Market Rules, which will be developed and owned by the Market Facilitator.

This statutory consultation follows our non-statutory consultation published in July 2025. This document sets out the scope and purpose of the proposed licence conditions, summarises stakeholder responses to the earlier consultation, outlines the changes made in response to feedback, and invites further comments on the updated licence text.

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Executive summary

We are introducing new licence conditions to the Standard Conditions of the Electricity Distribution Licence and the Electricity System Operator Licence. These will require Distribution Network Operators (DNOs) and the National Energy System Operator (NESO) to comply with the outputs of the Market Facilitator in its role to standardise local flexibility markets and align with national flexibility markets. The Market Facilitator is due to go live by the end of 2025.

This is a statutory consultation. The proposed licence conditions have been developed internally and through stakeholder engagement. We held two stakeholder workshops in June 2025 and published a non-statutory consultation in July 2025. The feedback received through both channels has informed the current version of the new licence condition clauses.

Requirements for new licence conditions

In previous publications we proposed roles and responsibilities for DNOs and NESO and explained that these would be set out in licence conditions:

- Flexibility Market Rules — licensees will be required to adhere to the rules that will be developed by the Market Facilitator in collaboration with DNOs and NESO and other interested stakeholders, through working groups and consultation
- Implementation monitoring — licensees will be required to provide data and information, referred to as “Market Facilitator Information”, to the Market Facilitator to demonstrate their compliance with the Flexibility Market Rules
- Market Facilitator input into NESO service design — introducing clauses relating to how the Market Facilitator and NESO will work together on NESO service design (for services in scope of the Market Facilitator) and consultation

We have decided not to include a licence obligation for NESO to comply with the terms of the NESO–Market Facilitator Ways of Working Document but we have retained other licence clauses relating to this document.

Next steps

The consultation will be open for four weeks. We will consider consultation responses prior to publishing a final decision in December 2025.

1. Introduction

This section provides background and context to the Market Facilitator role and the policy journey so far. We set out what we are consulting on and next steps.

Purpose of this consultation

- 1.1 To support the operation of the new Market Facilitator role, we are proposing to introduce new licence conditions to the Standard Conditions of the Electricity Distribution Licence and NESO's ESO Licence. NESO has two licences, Electricity System Operator (ESO) and Gas System Planner (GSP), however as the Market Facilitator role relates only to electricity and not gas, the new conditions will only be added to the ESO licence.
- 1.2 The purpose of this consultation is to gather stakeholder views on updates to the proposed new licence conditions to be added to the Electricity Distribution Licence and Electricity System Operator Licence to support the Market Facilitator. These updates incorporate stakeholder feedback received in response to our non-statutory consultation. In each section, we provide a summary of stakeholder feedback on our originally proposed licence conditions, and explain where and why we have (or have not) made changes.
- 1.3 In section 1, we introduce the new defined terms and definitions relevant to the new licence conditions. Some of these terms and definitions have been amended since our non-statutory consultation.
- 1.4 In section 2, we outline the updated shared conditions that will appear in both the Electricity Distribution Licence and Electricity System Operator Licence. These place obligations on licensees to comply with Flexibility Market Rules (Part A) and provide information necessary for Implementation Monitoring (Part B).
- 1.5 In section 3 we set out the updated new conditions that will appear only in the Electricity System Operator Licence. These place an obligations on NESO to engage with the Market Facilitator and jointly establish and maintain a NESO-Market Facilitator Ways of Working Document. They also set minimum content requirements for this document.
- 1.6 In section 4 we include comments and suggestions from stakeholders received in response to the non-statutory consultation that do not directly relate to the above sections.
- 1.7 The questions we would like stakeholder views on are listed below. We ask respondents to use the response template form when submitting their response (Annex E).

- Q1. Do you agree with the updated proposed Definitions to be added to the Standard Conditions of the Electricity Distribution Licence and the ESO Licence? Are any changes required?
- Q2. Do you agree with the updated proposed licence condition clauses for Flexibility Market Rules to be added to both Licences? Does the current drafting deliver the policy intent? Do you have any suggested changes?
- Q3. Do you agree with the updated proposed licence condition clauses for implementation monitoring to be added to both Licences? Does the current drafting deliver the policy intent? Do you have any suggested changes?
- Q4. Do you agree with the updated proposed licence condition clauses for Market Facilitator input into NESO service design to be added to the ESO Licence? Does the current drafting deliver the policy intent? Do you have any suggested changes?
- Q5. Do you have any additional comments or suggestions?

Context and related publications

- 1.8 Our [April 2022 Call for Input](#) on local energy governance revealed inconsistent practices among DNOs, unequal access to information, and limited coordination between local and national flexibility markets.
- 1.9 In [March 2023](#), we consulted on proposals to introduce a new Market Facilitator role to address these issues. Following this, in [November 2023](#), we confirmed our decision to appoint a single expert entity to fulfil this role.
- 1.10 [In December 2023](#), we sought input on whether Elexon or NESO should carry out this function. [In July 2024](#), we confirmed the appointment of Elexon as the Market Facilitator delivery body.
- 1.11 Since then, Elexon has collaborated with the Energy Networks Association's (ENA) Open Networks programme to facilitate the transition of relevant activities from DNOs. Elexon published a draft handover plan in March 2025 and a final version in [May 2025](#).
- 1.12 [In December 2024](#), we issued a consultation on the detailed policy framework for the Market Facilitator and in [June 2025](#), we published our decision on this.
- 1.13 In June 2025, we held two workshops focused on proposed licence drafting.
- 1.14 [In July 2025](#) we published a non-statutory consultation presenting our proposed licence condition changes to the Standard Conditions of the Electricity Distribution Licence and the ESO Licence for licensees to comply with the Flexibility Market Rules and implementation monitoring. We received seven responses to the consultation from DNOs, NESO, and Elexon.

Consultation Supporting the Market Facilitator: Proposed licence conditions

- 1.15 This statutory consultation presents our updated proposed licence changes, incorporating feedback received from stakeholders through both the workshops and non-statutory consultation.
- 1.16 Ofgem's [Forward Work Programme](#) sets out the key reform projects that we intend to focus on. This consultation relates to Strategic Priority 3: Establishing an efficient, fair and flexible energy system. Specifically, it supports our work to enable consumer-focused flexibility.
- 1.17 The new Market Facilitator will work to harmonise arrangements across markets for flexibility, so that it becomes easier for providers of flexibility to 'stack their revenues' across multiple platforms operated by the NESO and distribution system operators. Alongside the delivery of a large number of different policies, projects and programmes, this contributes to efforts to ensuring that all consumers can access the potential benefits of flexibility as outlined in the [Clean Power 2030 Action Plan](#). This work relates to key priorities set out in the [Clean Flexibility Roadmap](#), including path building actions 34, 40, and 41.

Consultation stages

Stage 1 Consultation open: 18 September 2025

Stage 2 Consultation closes (awaiting decision). Deadline for responses: 16 October 2025

Stage 3 Responses reviewed and published: December 2025

Stage 4 Consultation outcome: Decision

How to respond

We want to hear from anyone interested in this consultation. Please send your response to the person or team named on the front page of this document.

We have asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

We will publish non-confidential responses on our website.

Your response, data, and confidentiality

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

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you do wish to be kept confidential and those that you do

not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we will contact you to discuss which parts of the information in your response should be kept confidential and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the United Kingdom's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 1.

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

How to track the progress of a consultation

1. Find the web page for the call for input you would like to receive updates on.
2. Click 'Get emails about this page', enter your email address and click 'Submit'.
3. You will receive an email to notify you when it has changed status.

A consultation has three stages: 'Open', 'Closed (awaiting decision)', and 'Closed (with decision)'.

Proposed new definitions

In this section we introduce the proposed new defined terms and definitions to be included in the licence conditions to be added to the Electricity Distribution Licence and the ESO Licence.

Question

Q1. Do you agree with the updated proposed Definitions to be added to the Standard Conditions of the Electricity Distribution Licence and the ESO Licence? Are any changes required?

Background and policy intent

1.18 When introducing new licence conditions we are required to introduce new definitions which support the new drafting. In our previous consultation we set out our proposals for these new definitions, which had been informed by stakeholder feedback through workshops and internal review.

Summary of stakeholder responses

1.19 Most stakeholders broadly agreed with the proposed definitions, with some suggestions for refinements to improve clarity.

1.20 The following feedback on definitions common to both the Electricity Distribution Licence and ESO Licence was provided:

- Flexibility Market Asset Registration: Some suggested that the defined term “Flexibility Market Asset Registration” could be merged with that of “Flexibility Market Rules,” if the scope of the latter was expanded in more detail.
- Flexibility Market Rules: A minority of respondents felt that the scope of the FMRs had not yet been set out in sufficient detail to agree to the definition.
- Market Facilitator Intelligence: There was some concern about the scope of this definition and the implications it would have for licensees. Several respondents proposed narrowing the definition to exclude confidential or commercially sensitive information, and adding references to reasonableness, relevance, and existing confidentiality obligations. One respondent suggested replacing the term “Intelligence” with “Information.” NESO suggested that requests to NESO should not be limited to Information relating to the Transmission System, given they may hold information relating to the Distribution System.
- Market Facilitator: One respondent highlighted a need to cross-reference this definition to the Flexibility Market Rules, once these are set out.

1.21 Feedback on definitions for the ESO Licence only was given by one respondent (NESO):

- **Market Facilitator Governance Document:** it was suggested that, if this is referenced in the licence, it should include standard provisions outlining its scope and change processes, consistent with how similar documents are treated in the ESO licence.
- **NESO-Market Facilitator Ways of Working Document:** NESO expressed the view that compliance with this document should not be a formal licence condition, and it should instead remain a working-level agreement.

Our response and updated definitions

- 1.22 We have set out our updated proposed definitions in Table 1 and Table 2 below.
- 1.23 We have retained the defined term Flexibility Market Asset Registration and its definition. As this term is referred to in the definition of Flexibility Market Rules as well as in relevant policy documents, for example the Clean Flexibility Roadmap, our view is that the definition is necessary.
- 1.24 We have amended the term Market Facilitator Intelligence to Market Facilitator Information. This change was requested by Elexon and NESO, and is in alignment with other new licence conditions being introduced (e.g. in relation to the Regional Energy Strategic Plan (RESP)).
- 1.25 We have also made changes to the definition of Market Facilitator Information (previously Intelligence). In both the Electricity Distribution Licence and the ESO Licence, we have removed the parentheses that previously excluded legally privileged information from the definition. Instead, we have added a new licence condition, XX.6, which more clearly sets out what types of information are excluded. In line with NESO's suggestion, we have also expanded the definition in NESO's licence to include Information relating to the Distribution system.
- 1.26 We have not made changes to the definition of Market Facilitator Governance Framework Document. Since this document is binding on the Market Facilitator, rather than licensees, we do not believe that outlining the scope of the document and setting out the change process is necessary or proportionate. Since the term appears later in the licence text, it is important to define the term here.
- 1.27 While we have removed the obligation on NESO to comply with the terms of the NESO-Market Facilitator Ways of Working Document, we have retained other licence conditions referencing it. We therefore include the definition of this document in the updated table.
- 1.28 The definition of 'Market Facilitator Governance Framework Document' has been moved from Table 2 to Table 1, to reflect that it is now referred to in Condition XX.3 of both the Electricity Distribution and System Operator licences. We have also updated the wording to clarify that The Authority may amend this document by direction. We will consult on any changes to the Market Facilitator Governance Framework Document before they are made.

Proposed drafting

Table 1: Final proposed definitions common to both the Electricity Distribution Licence and ESO Licence

Defined term	Updated Proposed Definition
Flexibility Market Asset Registration	means common digital infrastructure enabling the collection, storage and access of asset registration data for local and national flexibility markets, covering technical asset data and flexibility service data.
Flexibility Market Rules	means the set of rules of that name (inclusive of rules in respect of Flexibility Market Asset Registration) owned by the Market Facilitator and developed in collaboration with the licensee.
Market Facilitator	means the role created by the Authority with a mandate to standardise local flexibility markets and align with national flexibility markets.
Market Facilitator Information Intelligence (Electricity Distribution Licence)	<p>means such information (other than information subject to legal privilege) to be provided by the licensee to the Market Facilitator which:</p> <p>(a) Relatesrelates to the licensee's Distribution System;</p> <p>(b) isis in the possession or control of the licensee; and;</p> <p>(c) the Market Facilitator considers necessary for its implementation monitoring function.</p>
Market Facilitator Intelligence Information (ESO Licence)	<p>means such information (other than information subject to legal privilege) to be provided by the licensee to the Market Facilitator which:</p> <p>(a) Relatesrelates to the Transmission or Distribution System;</p>

Defined term	Updated Proposed Definition
	(b) to <u>is</u> in the possession or control of the licensee; and;
	(c) the Market Facilitator considers necessary for its implementation monitoring function.
<u>Market Facilitator Governance Framework Document</u>	<u>means the document of that name that is published by the Authority and amended from time to time by direction.</u>

Table 2: Final proposed definitions for the ESO Licence only

Defined term	Updated Proposed Definition
Electricity Balancing Regulation	means Commission Regulation (EU) No 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing as it had effect immediately before IP Completion Day as read with the modifications set out in both SI 2019/532 - <u>The Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019</u> and SI 2024/706 - <u>Energy Act 2023 (Consequential Amendments) Regulations 2024</u> .
Market Facilitator Governance Framework Document	means the document of that name that is published by the Authority and amended from time to time.
NESO-Market Facilitator Ways of Working Document	means the document of that name to establish a framework for coordination between the licensee and Market Facilitator relating to the design of the NESO Services and other matters.
NESO Services	means the services which are deemed to be in scope of <u>the role of</u> the Market Facilitator as set out in the Market

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Defined term

Updated Proposed Definition

Facilitator Governance Framework Document.

2. Shared conditions for Electricity Distribution and System Operation Licences

In this section, we set out the updated shared clauses proposed for inclusion in the licence conditions to be added to both the Electricity Distribution Licence and the ESO Licence. For each clause, we explain the policy intent, summarise stakeholder views received during the non-statutory consultation, and invite further feedback.

Questions

- Q2. Do you agree with the updated proposed licence condition clauses for Flexibility Market Rules to be added to both Licences? Does the current drafting deliver the policy intent? Do you have any suggested changes?
- Q3. Do you agree with the updated proposed licence condition clauses for implementation monitoring to be added to both Licences? Does the current drafting deliver the policy intent? Do you have any suggested changes?

Introduction

Background and our original proposal

- 2.1 In our previous proposal we set out an obligation on the licensee to engage and comply with the Market Facilitator in its role to align and standardise flexibility markets and flexibility market arrangements and processes.

Summary of stakeholder responses

- 2.2 A minority of respondents proposed revising the draft licence text to clarify that licensees should comply with the Market Facilitator Rules, rather than with the Market Facilitator itself.

Our response and updated proposed licence text

- 2.3 We have amended XX.1 to more accurately reflect our policy intent for licensees to have an obligation to engage with the Market Facilitator. XX.2 sets out the obligation for licensees to comply with Flexibility Market Rules.

Proposed drafting

Introduction

XX.1

The purpose of this condition is to set an obligation on the licensee to engage ~~and comply~~ with the Market Facilitator in its role to align and standardise flexibility markets and flexibility market arrangements and processes.

Part A: Flexibility Market Rules

Background and policy intent

- 2.4 The Market Facilitator will develop Flexibility Market Rules in collaboration with DNOs, NESO and other interested parties. This approach ensures licensees have sufficient opportunity to contribute to their development and provide feedback to the market facilitator on any issues.
- 2.5 In our previous publications, we explained that an appeals process will be available for both the Flexibility Market Rules and the Market Facilitator budget, with Ofgem as ultimate decision maker, as a last resort.
- 2.6 Although our earlier consultation did not include full details of the appeals process—such as when and how an appeal may be raised—we committed to making the process robust and transparent, and to enabling appeals only where substantive concerns exist.
- 2.7 We have set out details of the appeals process in the Market Facilitator Governance Framework Document, taking learnings from the [draft Code Manager licence](#). The Market Facilitator Governance Framework Document is in draft form and is published alongside this statutory consultation. Therefore, proposals are not set in stone and are subject to consultation.

Summary of stakeholder responses

- 2.8 Stakeholders broadly agreed with the policy intent of this licence clause. There were some calls for clarifications to the text as well as some concerns raised.
- 2.9 There was support from some stakeholders with a requirement to comply with Flexibility Market Rules. Two DNOs expressed the view that the obligation should be to "use reasonable endeavours to comply," rather than imposing an absolute requirement.
- 2.10 The main concern was around the lack of detail around the rules and processes, particularly relating to the appeals process. Most respondents called for engagement ahead of the publication of this statutory consultation to further develop the details, including the circumstances in which an appeal can be raised. One stakeholder expressed the view that there should be no limiting criteria for bringing an appeal to Ofgem beyond there being "substantive concern."
- 2.11 There were requests for greater clarity in the licence text on the process for amending supplementary documents, including making changes to the Flexibility Market Rules. Some supported adopting a change process similar to that used for licence modifications. NESO argued against a change management process with open governance, citing risk of promotion of commercial interests over consumer value.

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- 2.12 A concern was raised by NESO about potential overlaps between Flexibility Market Rules and other regulatory obligations. They suggested that further consideration is needed to ensure these interactions are well understood and consistently interpreted.
- 2.13 One stakeholder expressed the opinion that flexibility service providers (FSPs) should also be subject to Flexibility Market Rules.

Our response and updated licence text

- 2.14 Our view is that an absolute obligation to comply with the Flexibility Market Rules is appropriate given the importance of removing the fragmentation that currently exists across local and national markets.
- 2.15 Stakeholders strongly supported having input into the development of the appeals process. We agree that this will be important and welcome input on the appeals process, including on the grounds for appeals.
- 2.16 To ensure there is enough time for meaningful engagement and so we can make changes to the appeals process in response to stakeholder views we have removed references in the licence text to specific circumstances under which an appeal may arise. Instead we have included our draft proposals in the Market Facilitator Governance Framework Document, published alongside this consultation, and we plan to hold a stakeholder workshop before this consultation closes to help refine the process further.
- 2.17 Removing the references from the licence and instead embedding them in the Market Facilitator Governance Framework Document means that we can — if required — make more substantive changes to address stakeholder views, thus giving stakeholders a greater opportunity to shape the appeals process ahead of our final decision which will be published in December 2025.
- 2.18 In addition, we have also made some clarifications, including making XX.2 subject to XX.4.
- 2.19 Our decision on the Market Facilitator's enduring change process for Flexibility Market Rules, including the open system of governance, is set out in an open letter published alongside this statutory consultation as Annex F.
- 2.20 We note NESO's concern about potential overlaps between Flexibility Market Rules other regulatory obligations. We have engaged with NESO to further understand these interactions. It is our view that current drafting is clear that Flexibility Market Rules do not override NESO's existing duties.
- 2.21 We do not believe that FSPs should be subject to Flexibility Market Rules. Since DNOs and NESO operate the markets — including the setting of rules — it is appropriate for obligations to apply to them. We do not consider it necessary to introduce additional obligations for FSPs.

Proposed drafting

Part A: Flexibility Market Rules

XX.2

The licensee must comply with the Flexibility Market Rules, subject to XX.4.

XX.3

The Market Facilitator will issue and amend the Flexibility Market Rules. The licensee ~~shall have the right to appeal~~ may raise appeal to The Authority upon the issuing or amending of the Flexibility Market Rules in accordance with the process outlined in the Market Facilitator Governance Framework Document. ~~solely in circumstances where:-~~
~~[INSERT CIRCUMSTANCES IN WHICH APPEAL ARISES]~~

XX.4

Nothing in this condition replaces, overrides or limits: (a) any statutory duty imposed on the licensee; or (b) any other obligation of the licensee under the licence or any industry code.

Part B: Implementation monitoring

Background and policy intent

- 2.22 Ofgem is responsible for ensuring compliance with and enforcement of licence conditions. However, the Market Facilitator will be accountable for monitoring how licensees implement the Flexibility Market Rules.
- 2.23 To carry out this implementation monitoring, the Market Facilitator will require data and information from DNOs and NESO to assess compliance with the Flexibility Market Rules. In the proposed licence condition this is referred to as "Market Facilitator Information" (previously "Market Facilitator Intelligence").
- 2.24 The specific data and information required to demonstrate implementation will include, for example, implementation status and target implementation date.
- 2.25 To minimise the burden on DNOs and NESO, we previously set out our expectation for the Market Facilitator to use publicly available data and information wherever possible. We also said that any requests for additional information must be reasonable.
- 2.26 We stated that licensees must provide this data as requested, noting that some data may be legally privileged, and proposed that such data be excluded. This exemption was included in the proposed definition of Market Facilitator Intelligence (now Information) set out in the non-statutory consultation.

Summary of stakeholder responses

- 2.27 Respondents agreed with the policy intent of this licence condition and with using publicly available data where possible. They also broadly agreed that requests made by the Market Facilitator, and the timescales in which those requests must be fulfilled, should be reasonable.
- 2.28 Some respondents recommended changes to the licence wording to clarify the nature of the obligation and ensure consistency with other licence provisions. One suggested making the obligation on licensees more explicit and absolute. Others preferred a more qualified approach, proposing that the scope of requests for Market Facilitator Intelligence be subject to tests of reasonableness and relevance.
- 2.29 One stakeholder suggested adapting Standard Licence Condition 31E (C31E) of the Electricity Distribution Licence to include implementation tracking to support the Market Facilitator.

Our response and updated licence text

- 2.30 We have amended the proposed licence text to reflect the change in the relevant defined term (see Table 1 and Table 2) and to clarify the nature of the obligation.
- 2.31 We have made the obligation to comply with requests from the Market Facilitator for Information subject to a test of reasonableness. We have not, however, included the "reasonable endeavours" wording requested by some stakeholders. In our view, this would introduce ambiguity and subjectiveness that could undermine the efficiency and clarity needed to meet the policy intent of this clause. Information requests are intended to enable the Market Facilitator to carry out its role and we therefore believe an absolute obligation is proportionate and necessary. We also consider that the definition of Information set out in Tables 1 and 2 ensures that the Market Facilitator can only make requests that are capable of being fulfilled by the licensee.
- 2.32 Our view is that C31E is not sufficient for the purpose of Market Facilitator Implementation monitoring, and it applies only to DNOs not NESO, therefore the proposed new licence conditions are necessary.

Proposed drafting

Part B: Implementation monitoring

XX.5

The licensee must, within a reasonable timeframe, provide Market Facilitator ~~Intelligence-Information~~ to the Market Facilitator as and when reasonably requested by the Market Facilitator.

XX.6

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The Market Facilitator ~~Intelligence Information~~ must be provided by the licensee in sufficient quality and format as the Market Facilitator may reasonably request. -

XX.7

The licensee is not required to comply with paragraph XX.5 if the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court.

3. Conditions for the Electricity System Operator only

In this section, we set out the updated proposed clauses to be included in the licence conditions that apply only to the ESO Licence. For each clause, we explain the policy intent, summarise stakeholder views received during the non-statutory consultation, and invite further feedback.

Question

Q4. Do you agree with the updated proposed licence condition clauses for Market Facilitator input into NESO service design to be added to the ESO Licence? Does the current drafting deliver the policy intent? Do you have any suggested changes?

Part C: Market Facilitator input into NESO service design

Background and policy intent

- 3.1 In our previous publication, we set out that NESO and the Market Facilitator should engage prior to formal consultation by NESO which is required under Condition C9: Procurement and use of Balancing Services and Article 18 of the Electricity Balancing Regulation.
- 3.2 We proposed including a licence clause to formalise this engagement in a Ways of Working document. We note that Elexon and NESO have already been developing proposals on how to work together.

Summary of stakeholder responses

- 3.3 Only two respondents provided substantive comments on the proposal to include a formal licence condition for the Market Facilitator to input into NESO service design: Elexon and NESO.
- 3.4 NESO disagreed that compliance with the Ways of Working document should become a formal licence obligation, citing the risk that this will stifle agility and flexibility. They suggested instead that the document should be treated as a working-level agreement.
- 3.5 There were also some calls for clarification to the licence text, including greater specificity on the stage at which engagement should take place between Elexon and NESO.
- 3.6 Elexon highlighted the need for more work to ensure the Ways of Working document strikes the right balance between providing strategic direction and allowing both parties flexibility.
- 3.7 NESO stated that, while they agree with the intention of engaging Elexon in service design, Elexon's role in providing input should not be placed "over and above other market participants."

Our response and updated licence text

- 3.8 We have amended the text to clarify that NESO should engage with Elexon prior to formal consultation, as originally set out in our policy intent. We do not agree with NESO's view that Elexon, as Market Facilitator, should not have greater input than other stakeholders. The purpose of this obligation is to support early engagement, reduce inefficiencies, and help avoid misalignment. By requiring engagement with Elexon before the public consultation stage, potential issues are more likely to be identified early in the development process.
- 3.9 We have removed the licence obligation for NESO to comply with the terms of the NESO-Market Facilitator Ways of Working Document. While we continue to regard this document as important, we recognise that it is more appropriately maintained as a working-level agreement.
- 3.10 Given its importance, we have however retained the related licence conditions that oblige NESO, in collaboration with the Market Facilitator, to jointly establish and maintain the NESO-Market Facilitator Ways of Working Document.
- 3.11 We have also updated the licence text to specify the minimum content requirements for the NESO-Market Facilitator Ways of Working Document.

Proposed drafting

Part C: ~~Market facilitator~~Market Facilitator input into NESO service design

XX.~~78~~

The licensee must fully engage and consult with the Market Facilitator~~from an early stage~~ in the service design for new and existing NESO Services prior to implementation decisions being made and ~~allowing for prior to~~ formal consultation (required under Condition C9 of this licence and Article 18 of the Electricity Balancing Regulation) by the licensee, for NESO Services.

XX.~~89~~

The licensee must, in collaboration with the Market Facilitator, jointly establish and maintain the NESO-Market Facilitator Ways of Working Document.

~~XX.9~~

~~The licensee must comply with the terms of the NESO-Market Facilitator Ways of Working Document.~~

XX.10

The NESO-Market Facilitator Ways of Working Document~~;~~ must contain information on how NESO and the Market Facilitator will coordinate change processes. This should cover, at least:

- How NESO and the Market Facilitator will ensure strategic alignment

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- Processes for managing instances where a Flexibility Market Rule affects NESO's service design
- Processes for handling NESO service design changes that require early stage input from the Market Facilitator.~~XX~~

XX.11

The licensee must provide a copy of the NESO-Market Facilitator Ways of Working Document to the Authority no later than the date on which this condition comes into effect, or another date agreed with the Authority.

4. Additional comments and suggestions

In this section, we summarise stakeholder comments received in response to our non-statutory consultation that do not relate to the proposed licence conditions set out in the previous sections. We provide our response to these comments and invite any further suggestions or feedback.

Question

Q5. Do you have any additional comments or suggestions?

Background

4.1 We asked stakeholders for additional comments and suggestions not captured under the previous sections.

Summary of stakeholder responses

- 4.2 One stakeholder questioned why the licence conditions do not apply to Independent Distribution Network Operators (IDNOs).
- 4.3 There was a suggestion to include a broad derogation requirement in the new licence conditions, similar to that found in Part G of Condition C7 of the ESO licence. Although no specific use cases were provided, it was suggested that this could offer helpful adaptability in unforeseen circumstances.
- 4.4 Some stakeholders used this section to request that the Market Facilitator Governance Framework Document is published ahead of this statutory consultation.

Our response

- 4.5 We know through reporting requirements under Standard Licence Condition 31E (C31E) of the Electricity Distribution Licence that IDNOs do not currently procure flexibility. Our view is therefore that placing obligations on IDNOs is not proportionate at this time. We will continue to monitor this through C31E and may review our position.
- 4.6 We do not believe that there is value in including broad derogation powers relating to the new licence conditions supporting the Market Facilitator. If conflicts or issues arise, appeals remain possible. In addition, Condition XX.4 ensures that Flexibility Market Rules do not replace, override, or limit other obligations.
- 4.7 The draft Market Facilitator Governance Framework Document has been published alongside this statutory consultation. We acknowledge stakeholder concerns that the document had not been shared earlier. We reiterate that it is in draft form and subject to consultation. Further changes can be made ahead of the final version. We will continue to engage with stakeholders to develop the

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document further, including through a workshop, ahead of its final publication in December.

Send us your feedback

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this consultation. We would also like to get your answers to these questions:

- Do you have any comments about the quality of this document?
- Do you have any comments about its tone and content?
- Was it easy to read and understand? Or could it have been better written?
- Are its conclusions balanced?
- Did it make reasoned recommendations?
- Do you have any further comments?

Please send your feedback to stakeholders@ofgem.gov.uk.

Appendix 1. Privacy policy

Personal data

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

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

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

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

2. Why we are collecting your personal data

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

3. Our legal basis for processing your personal data

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

4. With whom we will be sharing your personal data

N/A

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

Your personal data will be held for one year following the consultation closing.

6. Your rights

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

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically

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- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas

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

9. Your personal data will be stored in a secure government IT system

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