

Market Facilitator Governance Consultation Response Form

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Please use this response form to respond to the Market Facilitator Governance Consultation which was published on Thursday 18 September 2025.

Please submit your response to flexibility@ofgem.gov.uk by 5pm on Thursday 16 October 2025.

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| Confidentiality |
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Do you want all or part of your response treated as confidential? If yes, please confirm if all or part of the response should be treated as confidential and if so, which part

No

Questions

Annex A – Draft Governance Framework Document

Q1. Do you agree that the Draft Governance Framework Document clearly defines the scope, roles & responsibilities and deliverables of the Market Facilitator? If not, what would you change and why?

The Draft Governance Framework Document offers a solid foundation for understanding the Market Facilitator's roles, especially as flexibility markets become more coordinated. It clearly defines Elexon's responsibilities as the delivery body – developing and maintaining market rules, engaging stakeholders, and monitoring implementation. Governance mechanisms like the Stakeholder Advisory Board and appeals process add transparency and accountability. From a DNO perspective, the framework helps clarify how responsibilities will be shared across industry parties and how national and local coordination will be supported.

While we broadly agree the document provides a comprehensive overview of scope, roles, and deliverables, there are areas where greater clarity and completeness would improve its effectiveness. Some examples are suggested below:

- **Alignment of Go-Live Date:** The document currently states that the Governance Framework applies from 1 January 2026, while Elexon has indicated a go-live date of 1 December 2025. These dates should be aligned to avoid confusion and ensure consistency in expectations and obligations.
- **Amendment Process:** The section on compliance (paragraph 1.25) should explicitly state that any amendments to the Governance Framework Document will be subject to a formal consultation process. This would enhance transparency and stakeholder confidence in the governance arrangements.
- **Clarity on Roles & Responsibilities:** In Section 2, some descriptions of responsibilities would benefit from clearer language specifying that these relate to the Market Facilitator. Additionally, references to processes (e.g. appeals, implementation monitoring) should be cross-referenced to the relevant sections and relevant Market Facilitator documents to aid navigation and understanding.
Specifically, bullet point 3 in 2.11 for Ofgem responsibilities should reference to both 'reviewing and approving' the detailed governance arrangements developed by Elexon

- **Deliverables Detail:** While the deliverables are listed, some descriptions such as those for the Flexibility Market Rules and the Implementation Tracker are too brief and would benefit from further wording to clarify their purpose and scope. Examples:
 - 3.10 is brief and needs further clarification;
 - 3.30 is unclear and further clarification of the intent is needed;
 - 3.13 conflicts with 3.14 and we suggest can be removed
 - 4.27 bullet point 3 would benefit from additional words ‘along with highlighting any consequential impact on the MF delivery plan / schedule’
 - the Implementation Tracker should explicitly state its role in monitoring the adoption and consistency of standardised processes across DNOs and the NESO, ensuring alignment and transparency in implementation.
- 1. **Stakeholder Advisory Board:** The role of the Stakeholder Advisory Board is well-articulated, but the document should also reference how its feedback will be incorporated into performance assessments and decision-making processes. To strengthen this link, it would be beneficial to explicitly describe the integration mechanism..
- **Transition from Existing Governance Structures:** More detail is needed on how current working groups and reporting structures will transition into the new framework. As previously noted, establishing clear cross-references between the Ofgem Governance documents and the Market Facilitator documents would support continuity and coherence across governance materials and help avoid duplication.

Q2. Do you agree with the appeals process and the proposed performance arrangements for Elexon as the Market Facilitator? If not, what would you change and why?

We welcome the inclusion of both the appeals process and the performance arrangements, which provide important mechanisms for accountability and stakeholder engagement. However, we recommend the following improvements:

Appeals Process

- **Visual Representation:** A process map or flow diagram would help stakeholders understand the key stages of the appeals process, including submission, review, decision-making, and communication timelines.
- **Timeliness and Transparency:** The term “timely manner” in 4.24 and 4.53 is too vague. Clearer guidance is needed on expected timeframes for review and resolution, and how stakeholders will be kept informed throughout the process. We suggest a long-stop date is inserted to give prospective appellants a clear time horizon by which a decision would be made. We

recognise that Ofgem have the intent to seek that this is as soon as is practicable.

- **Appeal Window:** The current 14-day window for submitting appeals may be too short, particularly for complex decisions where interested parties need sufficient time to assess implications and gather supporting evidence. Consideration should be given to a more flexible or extended timeframe, especially for appeals involving cumulative or indirect impacts. In addition, the 14-day limit appears short when compared to existing code governance processes. For example, licence modification appeals under the Electricity Act 1989 allow 20 working days (approximately four weeks) from the date a decision is published. While some industry codes reference 15 working days, and the CMA timeline is 20 working days, we recommend aligning the appeal timelines with those used for licence modifications (20 working days) to ensure consistency, practicality, and fairness across governance arrangements.
- We also note inconsistencies between Ofgem's consultation and Elexon's draft governance documents (e.g., references to 15 working days in sections such as paragraph 10.3.1 and MFD03). To avoid misalignment, any changes within Ofgem's final document should be carefully reflected in the Elexon suite of documents, and both should be published at the same time going forward. **Appeals Against Existing Rules:** It could be made clearer that the appeals process applies equally to new or existing rules by changing 4.31 to be a bullet point list of the three areas that the appeals process would apply to. In addition, while Ofgem will retain responsibility for enforcement, we note that the Market Facilitator will monitor compliance. To support transparency and collaborative governance, we recommend building in a process whereby the Market Facilitator consults with relevant stakeholders before referring any potential non-compliance to Ofgem for enforcement action.
- **Stakeholder Input During Appeals:** The framework should include a process for notifying affected parties when an appeal is lodged and allow them to submit relevant information to Ofgem. This would ensure a fair and inclusive process. While paragraph 4.41 specifies that "Housekeeping changes" cannot be appealed, we suggest reconsidering this exclusion. If there is disagreement over whether a change is genuinely housekeeping, parties should not be prevented from raising concerns. In practice, if a change is truly housekeeping, it is unlikely to be appealed, so retaining an appeal route would not undermine efficiency, but would help safeguard transparency and trust in the process.
- **Appeal Transparency:** There is currently no explicit requirement on Elexon to reply to parties' submissions or to provide visibility of those representations. While the Ofgem governance document does require that appeals be submitted to both Ofgem and Elexon simultaneously, it is silent on Elexon's

role thereafter. Notably, Elexon's own documentation refers to publishing appeals and collaborating with Ofgem on budget-related appeals, but does not address appeals in other areas. This gap highlights the need for greater clarity in the governance framework. It would be beneficial for the document to more clearly define the responsibilities of both Elexon and Ofgem in terms of publicising and responding to appeals, ensuring transparency and consistency across all types of appeals.

- **Availability of Judicial Review:** While Ofgem's decision may be described as "final" in the context of the governance process, this should not be interpreted as an ouster clause. As a public body, Ofgem's decisions remain subject to Judicial Review, ensuring legal accountability and procedural fairness.

Performance Arrangements

- **Stakeholder Feedback Mechanism:** While the Stakeholder Advisory Board is referenced, it is unclear how feedback from DNOs and other stakeholder segments will be considered and weighted. A more formalised and transparent feedback loop for each stakeholder group (e.g. Network Operators, Flexibility Service Providers, end-consumers) would help ensure Elexon remains responsive to sector needs.
- **Consumer Value:** Consumer outcomes must remain central to the Market Facilitator's role and should be explicitly considered in the performance review process.
- **Initial Assessment Period:** Given that the Market Facilitator will have only four months of operation by 31 March 2026, we see benefit in implementing a light-touch early feedback process during this initial period. This would help avoid placing a disproportionate burden on the organisation while supporting continuous improvement. It should be explicitly stated within the document whether this early feedback will be treated as a standalone process for the first four months, or whether it will form part of a broader 16-month assessment. Clear articulation of this approach will help manage expectations and ensure transparency.
- **Interim Corrective Actions:** The framework outlines consequences for poor performance but does not include provisions for staged or collaborative remediation prior to Ofgem intervention. A staged approach could help resolve issues more quickly and avoid disruption to the wider Flexibility sector.
- **Criteria for Role Reassignment:** The grounds for removing or reassigning the Market Facilitator role are broad. We suggest refining the language to refer to "significant failure" and clarifying what constitutes a "change in policy" to avoid ambiguity.

These enhancements would strengthen the governance framework and ensure that both the appeals and performance arrangements are fair, transparent, and proportionate.

Q3. Do you have any other comments on the Draft Market Facilitator Governance Framework Document?

Please review above answers to question 1 and 2.

Annex B – Draft Market Facilitator Impact Assessment

Q1. Do you agree that we have, to a reasonable extent, identified and understood the potential costs and benefits of implementing the Market Facilitator?

Ofgem's assessment of the Market Facilitator proposal demonstrates a reasonable understanding of both the potential costs and benefits, particularly in relation to addressing existing barriers to FSP participation.

The document acknowledges current market inefficiencies, some of which have been addressed through the previous ENA working groups. However, it also recognises that further improvements are possible. The assessment accurately reflects several challenges in coordinating flexibility markets across DNO areas, including inconsistent participation processes and the need for greater standardisation.

The document outlines the benefits of introducing a Market Facilitator to enhance transparency and support alignment across all DNOs. It also presents cost modelling in a transparent manner, including implementation costs such as IT overheads and resourcing. Ofgem has made a good effort to quantify long-term benefits, while also acknowledging the limitations of attributing these benefits to a single intervention. It rightly notes that the Market Facilitator is just one component of a broader system transformation.

However, the document could better acknowledge the limitations of standardisation, particularly in light of geographic and location-specific challenges faced by individual DNOs. For example, DNOs operating in more rural areas may engage with different types of stakeholders and adopt distinct procurement strategies tailored to local needs.

While standardisation remains a key priority, it must be approached in a way that reflects the practical realities of the sector. The document could more clearly reflect the importance of considering the diverse profiles of FSPs. A one-size-fits-all approach to contracting has proven inefficient in practice. From SPEN's perspective, certain contract clauses may be suitable for large generators but not for aggregators managing smaller assets. Reducing market fragmentation is beneficial, but DNOs, Ofgem, and the Market Facilitator must recognise that standardisation across consumer types has practical limitations. Larger generators and smaller-scale assets

have fundamentally different needs, and future standardisation efforts must be tailored to reduce barriers for each FSP or asset type.

Q2. Do you agree that we have, to a reasonable extent, identified and understood the potential impacts of the introduction of the Market Facilitator? Are there any unintended consequences of implementing the Market Facilitator that we have not identified?

Ofgem has made a reasonable and thorough effort to identify and understand the potential impacts of introducing the Market Facilitator, particularly from the perspectives of DNOs and the Market Facilitator. The assessment outlines key benefits such as improved market transparency, reduced friction in flexibility procurement, and better alignment between local and national markets.

However, there are areas where the document could better reflect the risks and challenges faced by FSPs which could directly affect DSO's operation of Flexibility Markets. In particular:

- Diversity of FSPs: The assessment does not sufficiently acknowledge the wide range of FSP types, including smaller providers or those with limited resources. These groups may face disproportionate challenges in adapting to new processes, even if the long-term goal is simplification and standardisation.
- FMAR-related changes: While the proposed reforms under the FMAR are broadly welcomed, the impact on different FSP personas should be more explicitly addressed. To support inclusive participation, tailored support or transitional arrangements may be needed from the DNO side. This requirement could be more explicitly recognised in the Impact assessment.
- Innovation risks: Another important consideration not fully considered is the potential constraint on future innovation. As markets become more standardised, DNOs and FSPs may require some level of flexibility to trial new commercial models or technical solutions outside the formalised processes. Without mechanisms to accommodate innovation, there's a risk of reducing progress in innovation of flexibility markets which could benefit end-consumers.

While the impact assessment is strong overall, a deeper understanding of the diversity and innovation needs of FSPs would enhance its conclusions and help ensure the Market Facilitator delivers value across all market participants, while also future-proofing its objectives.

Annex C – Licence Changes

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?

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We are broadly supportive of the updated definitions proposed for inclusion in the Standard Conditions of the Electricity Distribution Licence and the ESO Licence. These definitions provide a clear and structured foundation for the evolving flexibility market framework.

However, we would like to propose a change to the description of the Flexibility Market Asset Registration (FMAR) definition.

While we agree with retaining the term, the current description may give the impression that FMAR is already an established rule or regulatory requirement. FMAR is still under development and is expected to be progressed as a priority by the Market Facilitator.

We support the inclusion of a term that reflects the registration of assets participating in flexibility markets. However, the current description lacks clarity around:

- Ownership – it should be clear that FMAR is a Market Facilitator-led initiative
- Development status – FMAR is not yet operational or finalised
- Implications for other parties – it is not currently a binding obligation

To avoid confusion and ensure accurate stakeholder understanding, we recommend that the description is revised to explicitly state that FMAR is:

- Under development,
- Led and owned by the Market Facilitator, and
- Subject to further consultation and governance processes.

This clarification would improve transparency and support clearer communication with stakeholders.

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?

The updated proposed licence condition clauses broadly deliver the policy intent of ensuring that both DNOs and NESO are obligated to comply with the Flexibility Market Rules developed by the Market Facilitator. The clauses in Part A clearly establish that licensees must comply with the FMRs.

However, SPEN and SPENW would like to highlight that the current obligation is framed as an absolute requirement, which may limit the ability of NESO, DSOs, and the Market Facilitator to respond flexibly to emerging needs or to innovate - particularly when updating or trialling changes to the Flexibility Market Governance and Rules.

We recommend that Ofgem amend the wording of the obligation to a “reasonable endeavours” requirement, rather than an absolute one. This would provide licensees

with the necessary flexibility to manage unforeseen circumstances and support innovation, while still maintaining the intent of compliance with the FMRs.

As an alternative approach, we suggest the introduction of a derogation clause that would allow DNOs to apply for temporary exemptions from the FMRs, subject to approval by Ofgem or the Market Facilitator.

Clause XX.4, which currently allows for exceptions only in cases of legal inconsistency or other licence obligations, is too narrow and may not sufficiently support DNOs in managing unforeseen situations or enabling innovation that could benefit the future evolution of the flexibility market as a whole. Ofgem could introduce a clause that allows for DNOs to apply for a derogation which would be subject to approval by Ofgem or the Market Facilitator, particularly for:

- Innovation and experimental trials
- Significant and unforeseen externalities outside of the control of the licensee
- Temporary transitional arrangements during appeals or updates to any suggested governance framework or rule updates

This proposed change would encourage innovation without regulatory risk which would allow for healthy evolution of the flexibility markets as the markets develop. It would also future proof the Flexibility Market framework against any potential unforeseen developments.

To make the process clearer and more transparent, we propose that Clause XX.3 should include a reference to Elexon's governance document that outlines how the Flexibility Market Rules are issued and amended. This would help ensure everyone understands how changes are made, improve accountability, and meet stakeholder expectations for openness in how the rules evolve. Suggested wording would be: The Market Facilitator will issue and amend the Flexibility Market Rules in accordance with the process outlined in xxx

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?

We broadly support the updated proposed clause for implementation monitoring as a necessary mechanism to ensure compliance with the Flexibility Market Rules. The intent to provide the Market Facilitator (Elexon) with sufficient information to assess licensee performance is clear and aligns with the overarching policy goals of transparency, standardisation, and accountability in flexibility markets.

However, the current drafting of clause XX.7 does not go far enough to address concerns over third-party or commercially sensitive data. XX.7 appears to compel licensees to provide Market Facilitator Information without sufficient safeguards or limitations regarding the nature of that data. This raises concerns about the potential for inadvertent disclosure of commercially sensitive information or third-party data, particularly in cases where licensees act as intermediaries in the flexibility market

and receive data from flexibility service providers. The current drafting does not sufficiently safeguard such information, which may be subject to confidentiality obligations or commercial sensitivities.

We recommend the following changes to strengthen the drafting and better reflect the policy intent:

- Explicitly state that third-party or commercially sensitive data—particularly where its disclosure could pose risks to personal data privacy or involve third-party commercially sensitive information—should be excluded from the scope of Market Facilitator Information, unless there is a clear and specific legal or regulatory obligation requiring its disclosure.
- Establish clear wording or associated policy or justification framework to assess the reasonableness of information requests made by the Market Facilitator. This should ensure that any request is demonstrably proportionate, directly relevant, and genuinely necessary to fulfil the reporting requirements for implementation monitoring. Such a framework would promote transparency and consistency, enabling licensees to understand and respond appropriately to requests while protecting against overly broad or intrusive demands.
- Clarify the process for challenging or negotiating information requests, including a mechanism for licensees to raise concerns about confidentiality or relevance before disclosure.

These changes would help ensure that the implementation monitoring framework is robust, fair, and does not place undue burden or risk on licensees without clear benefits around transparency to end consumers, while still enabling the Market Facilitator to fulfil its role effectively.

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?

N/A

Q5. Do you have any additional comments or suggestions?

Please see above suggestions in answers to questions 1-4.