

Ofgem
Decentralised Energy Systems

18th February 2026

Email: flexibility@ofgem.gov.uk

Response to Smart Secure Electricity Systems (SSES) Programme: Enduring Governance consultation

BUUK Infrastructure (BUUK) welcomes the opportunity to respond to your recent consultation on implementing the new load controller licence arrangements.

As well as our response to the consultation we've provided a short overview of our business and set out the key aspects of the proposals that we believe are important to make the implementation a success.

Overview of our business

BUUK is a leading British multi-utility infrastructure investor, working across Great Britain and competing against incumbent utility companies.

Our initial interest in utilities began with ownership of regulated gas networks and we have gradually expanded our portfolio into other utility sectors including electricity, fibre, water, wastewater, and heat. We have provided over three million utility connections and continue to serve these customers across 50,000 discrete networks.

We also provide smart low carbon technology (LCT) and load controller/flexibility service solutions to help decarbonise homes through our Passiv and Levelise businesses.

Summary of our views

We support the proposal to introduce a new licence regime for load controller and flexibility service providers (FSP). We believe that this will provide long term benefits to the flexibility market. It will do so by helping increase consumer confidence in the market. Delivering network resilience and providing clarity to existing and potential new market participants on the standards of services that they need to provide.

We feel the approach taken to introducing new regulations to this market is proportionate considering its early stage. This justifies the reduced number and breadth of the proposed obligations compared to those in place for the energy supply sector.

The regulatory regime for load control needs to recognise that this is a rapidly evolving market and one where participation is not mandatory by consumers but is a choice. Services and technology will rapidly evolve and the regulatory regime should facilitate this and not act as a barrier for evolution.

Some aspects of the proposed regime we have identified potentially create future risks and we would like to see measures included from the outset to ensure these are mitigated:

Reporting and oversight

The regulatory reporting regime appears to be modelled on the existing regime used by Ofgem to monitor the energy supply market. Whilst the logic for this approach appears reasonable the differences between the two markets needs to be recognised.

The flexibility market is much smaller, is evolving quickly and does involve the provision of essential services to consumers. The participants in the market include some large established household name energy suppliers but also includes significant numbers of smaller innovative new organisations.

The approach to oversight needs to take these differences in the market into account. For example proposals by Ofgem to include quarterly reporting on performance for all organisations, regardless of size, is not justified in the proposals.

There are several regulatory oversight regimes being established for flexibility services. These include Ofgem's load control licence regime, the Energy Ombudsman for compliant handling for flexibility service providers, the flexibility market facilitator and Elexon's new Security Governance Group. The overall impact of this collective new regime should be considered, especially the administrative burden that it presents for small market participants.

There are areas of clear overlap and duplication in reporting already apparent in the proposals. In particular 'market development' reporting seems to be considered a priority for many of these the newly created oversight entities. Being a new and less widely understood market their interest is understandable. However this is an example of where excessive duplicate reporting could be avoided by making one entity responsible for collating this information and making it available to all interested stakeholders.

Cyber-security

We support the approach of only designating load controllers an OES when they reach a critical size. This is proportionate and recognises the implications their actions can have on society.

The proposal to use Elexon and to create a new cyber security compliance regime for smaller organisations therefore seems an appropriate solution.

However our experience from the existing energy code compliance regimes suggest that they often develop into cottage industries with unnecessarily high costs for market participants. In the existing energy market these costs ultimately get passed to consumers in the form of higher bills for an essential service.

In the flexibility market if costs for participation increase it will lead to reduced competition and less attractive options for customers who do want to participate.

The controls over the costs of the Elexon Security Governance Group activity therefore need to be robust. By the time the new regime is in place Elexon will be a licenced code manager, answering to Ofgem rather than the industry. Adequate safeguards and controls are needed by Ofgem for this new regime to ensure that it remains efficient and appropriate for the cyber threat that small load controllers present. We would like to see further detail and clarity on how this will be achieved.

Consumer protection

We understand the importance of consumer protection and the rationale for this to be a focus for Ofgem. However it should also be noted that the flexibility services market is materially different to energy supply. Consumers choose to engage with flexibility service providers rather than it being necessity and the market at this point of time is still very small for domestic consumers. Ofgem's approach to regulation should take these market differences into account.

I hope our responses are helpful and we would be happy to discuss them in more detail with you.

Yours faithfully,

Alex Travell

Head of Regulation

Responses to consultation questions:***1. Do you agree that the Licence Policy Principles, as well as Ofgem's Growth Duty, are the correct principles to guide the development of Ofgem's implementation proposals?***

Yes, it is good to see recognition of the nascent nature of the market by Ofgem. The market size is currently limited and the number of new entrants is small. It is important to recognise this in the regulatory framework and to ensure that Ofgem considers market growth and development are as equally important as its other duties and objectives. Any measures taken to intervene in the market should be proportional and not create longer term harm to its evolution.

2. Are there other measures Ofgem and DESNZ should consider in order to ensure the regime is proportionate and our approach minimises unnecessary burden?

The administrative burden from regulatory reporting should be considered for load controllers/FSP that do not have an existing supply licence. There seems to be no consideration for reporting to be proportionate to the size of the organisation. The reporting appears instead based on that already used for the energy supply market. This is a mature market dominated by very large organisations. It is not clear that the disproportionate impact on smaller organisations has been considered in the proposals for regulatory reporting.

3. Do you agree with the proposed application form evidence requirements for each area? Please provide reasons for your answer, including any concerns with providing the requisite information and why.

This appears to follow the standard licence application process applied by Ofgem for all energy sector licences. A common approach is logical and provides new licensees with a basis to understand what to expect, we therefore support the proposal.

4. Do you agree with the proposal for a 12-month transition period? Please provide reasons for your answer.

Yes, for existing load controller/FSP organisations operating in the market adjusting to the new requirements and to complete the required application process will take time.

There is also a need for time to be allocated for Ofgem to process the applications and potentially enter dialogue with organisations on specific issues.

A period of 12 months seems reasonable to achieve this activity.

We would suggest there is a review period included towards the end of the year with the potential for the transition period to be extended. This would provide flexibility should the process turn out to take longer than anticipated.

5. Do you agree with our proposed application process for certain licensed suppliers?

N/A

6. Do you agree that the proposed application process for certain licensed suppliers should apply to licensed domestic suppliers, and not licensed suppliers who supply non-domestic customers only?

N/A

7. Do you agree with our proposed application process for non-licensed suppliers? Please provide reasons for your answer.

Yes, this proposes to follow the existing process applied by Ofgem for the award of licences in the energy sector. This is a long established and proven process and therefore we believe that it should be appropriate for the new load controller licence.

8. Do you agree that the proposed application process for different types of applicants is proportionate and reflects the SSES purpose and Licence Policy Principles?

Yes

9. Do you agree that our proposed timelines for licence application processing are reasonable? Please provide reasons for your answer.

The proposed timeline seems reasonable but issues may arise that may require this to be altered. Issues could include:

1. The final version of the required documentation is not available well before the end of 2026 to allow prospective licensees understand what is needed.
2. The assumed timeline suggests that prospective licensees will all apply in the first three months of 2027, allowing Ofgem nine months to process the requests. This may not be how prospective licensees decide in practice to operate. Applications may be received throughout the year or towards the end of the year, applying additional pressure for Ofgem to be able to respond in time.
3. It isn't clear as to why it would take prospective licensees only 3 months to complete their application whilst Ofgem would need 9 months to review it. Completing the application is more onerous and time consuming than checking its accuracy. Therefore it may take longer for prospective applicants to apply than is assumed in the current timelines.

10. Do you agree with our proposal that tacit authorisation should not apply to the load control licence?

Although this appears logical there is a need to consider how load controllers currently active in the market are to be dealt with should their process for licence application not be completed by the end of the transition period.

It would not be in the market or their customers interest for their services to be terminated or paused unnecessarily. Therefore in the absence of a tacit authorisation scheme there may be a need for the transition period to be flexible. To mitigate this a solution could be that all applications must be made by the end of 2027 but granting of the licences may take to a later date.

11. Should Ofgem reconsider the question of tacit authorisation in future?

No as it is unlikely to be needed on an enduring basis.

12. Do you agree with the proposed approach to compliance-related monitoring? Please provide reasons for your answer.

Yes, this approach has proven to work for existing licenced activities in the energy sector.

13. Do you agree with the proposed approach to market insights-focused monitoring, and are there any additional market indicators we should consider tracking? Please provide reasons for your answer.

Consideration should be given to the reporting that Elexon, as Market Facilitator, and Ofgem are asking for with regards to insights-focused monitoring.

Multiple requests for the same, or similar, data from different regulatory organisations creates unnecessary administrative costs on organisations ultimately raising costs for consumers or reducing competition as the burden falls disproportionately on smaller organisations.

A co-ordinated approach to obtaining data once, and then sharing this amongst the varied regulatory and other interested parties is something that Ofgem should lead on, based on its growth and broad consumer protection objectives.

14. Are the proposed RFIs proportionate and manageable?

We recognise that these appear to mirror existing reporting for energy supply businesses. This may be intended to streamline and provide support for existing energy supply licence holders who are also providing load control services.

Taken from our perspective as a new entrant into the market we would challenge the need for quarterly reporting. It is unclear to us why Ofgem would need any reporting at

this frequency. We believe it would be better and more proportionate for all reporting from non-energy supplier affiliated organisations to be only made on an annual basis.

15. Please estimate the costs for your organisation for responding to the proposed RFIs. In the impact assessment accompanying the DESNZ Licensing Consultation government estimated indicative costs of approximately £7,000 to £24,000 per annum. Is this estimate appropriate?

We are in the process of implementing changes to our business to ensure that we are compliant with the new regulations. Once these are complete we can provide a view as to the financial impact.

16. Do you agree with our proposed risk-based and proportionate approach to compliance under the load control licensing regime? Please provide reasons for your answer.

Yes, a risk-based approach has proven effective in Ofgem's oversight of the energy retail and network markets to date. We therefore support its application for the new load control licence.

17. Are there additional factors we should consider when determining the level of compliance engagement for different types of licensees (e.g. new entrants vs licensed suppliers)?

The level of consumer harm that an organisation may cause is linked to relevant size of its customer base, rather than the spread of different services that it provides. We would therefore suggest that compliance engagement should be tailored to the size of an organisation's customer base rather than whether they provide load control and energy supply activities.

18. Do you support the proposal to use informal account management relationships to support licensees into compliance in the early years?

Yes, this will prove an effective approach. It will provide greater insight for the Ofgem compliance team when trying to identify and understand an issue with an organisation. It also provides a contact point for load controllers to use within Ofgem when seeking advice and dialogue on issues.

19. Do you agree with the proposed priority areas for compliance engagement?

Mostly yes although we disagree with the focus on vulnerable customers from the outset. This is a new market for Ofgem to regulate and we would suggest that it is better for it to spend time developing an understanding of how it operates, what types of customers are engaging in the market and what organisations are participating.

Once Ofgem have clarity on this it can then decide whether it is appropriate N/A to focus on vulnerable customers or whether there are other more pressing priority areas.

20. Do you agree with our proposal to align enforcement under the load control licensing regime with Ofgem's existing enforcement approach, outlined in the Enforcement guidelines?

Yes, a consistent approach to enforcement provides regulatory certainty and context for load controller organisations as to how the future framework will operate.

21. Do you agree with our proposed enforcement approach for multiple licence holders?

N/A

22. Are the regulatory requirements for different types of Load Controller sufficiently clear?

Yes

23. Do you agree with the proposed approach to cyber security assessments for load control licence applications?

Yes, although the appropriate CAF Tier 2 will need to be published by DESNZ in time for existing load controllers to understand what is required and have addressed any gaps. We support the view that this be linked to licence condition 9 becoming effective.

24. Do you agree with the proposed approach to cyber security monitoring and compliance?

Yes

25. What would you suggest is a reasonable equivalent of a CRA Audit?

N/A

26. Do you agree with the inspection process outlined for the cyber security of below 300MW Load Controllers?

We have experience within our wider group of companies of the Smart Energy Code (SEC) cyber security regime, as well the approach to compliance auditing by Elexon for the BSC.

Both the SEC and BSC 'industry led' compliance regimes can be expensive and time-consuming to interact with for an organisation. We would not wish to see a similar arrangement developed for the new Elexon operated Security Governance for load control.

The existing SEC and BSC compliance and audit regimes do not consider the relative size of an organization and therefore incur disproportionate costs for small organisations. We have also seen challenges with the quality of auditors that are employed. Overall there seems a lack of incentive on these bodies to deliver efficient and proportionate activities.

We would like to see clear accountability and performance management for the new inspection process for smaller load controllers. By the time the new service is in place Elexon will be a licenced code manager, reporting to Ofgem. We therefore would like to understand how Ofgem will ensure that this regime is operating in the interests of the market and supporting its growth objective.

27. Do you agree with our proposed approach to licence modifications?

Yes, the approach mirrors that used for other energy sector licences. This works effectively and therefore it is sensible to adopt the same process.

28. Do you agree with our proposed process for the transfer of a load control licence?

Yes, this process has been successfully employed on occasions in the past for the existing energy licences and has developed into a robust process that Ofgem is used to managing. Utilising this for load control licences ensures that it should operate in an efficient manner.

29. Do you agree with our proposed approach to extending/restricting a licence?

Yes, this process has been successfully employed on occasions in the past for the existing energy licences and has developed into a robust process that Ofgem is used to managing. Utilising this for load control licences ensures that it should operate in an efficient manner.

30. Do you agree with our proposed approach to revocation of the load control licence, including our proposal to include a revocation item on the basis of failure to comply with the NIS regulations?

Yes, this process has been successfully employed on occasions in the past for the existing energy licences and has developed into a robust process that Ofgem is used to managing. Utilising this for load control licences ensures that it should operate in an efficient manner.

31. Do you agree with our proposed approach to cost recovery for the load control licensing regime?

As all customers who participate in the flexibility market and use services provided by load controllers will have, by definition, an electricity supply we see the logic to recover regulatory costs from their network charges.

We note that these socialised regulatory costs are increasing with both heat and load control activity now being recovered from all electricity and gas network customers. It is apparent that not all customers connected to the electricity and gas networks can benefit from this expanded regulatory activity and therefore the concept that they should be paying for it becomes difficult to justify.

Annex D Guidance Questions:

1. Does the guidance contain enough information to support you in complying with the consumer protection conditions?

It is good to see Ofgem publishing guidance to assist FSP in understanding how to interpret the licence conditions and what is required of them.

We are unsure how to interpret the guidance that *“FSPs should ensure that any technology involved in the load control arrangement is accessible”*. Providing FSP and load control services requires automation and technology. It would be helpful for Ofgem to provide further clarity on what is meant by this aspect of the guidance in the context of FSP services.

We would like to understand what practical measures FSP are meant to undertake to ensure that we are *“monitoring the situations of our customers on an enduring basis to identify emergent vulnerabilities at the earliest opportunity”*. This isn’t something that we have experience of in the current services that we provide to customers and we would like clarity on what this looks like in practice.

We would appreciate clarity on how as an FSP we should be expected to be aware of customers whose *“personal circumstances change, and as a result are left in a more vulnerable position than they were at the point of contract inception”*. This may not be information that a customer would like to share with their FSP.

2. Are there any additional risks that are not currently addressed by this guidance, or does this guidance sufficiently cover the key risks?

None that we are aware of.