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Flexibility Team
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By email only

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Dear Flexibility Team,

OVO response to the “Implementing the load control licensing regime” consultation

Thank you for the opportunity to respond to this consultation. OVO is one of the UK's largest energy suppliers, with a history of disrupting the status quo in the energy sector. OVO currently offers customers the ability to participate in consumer-led flexibility through our Charge Anytime proposition.

Consumer flexibility emerging at scale is a key enabler of an efficient net zero transition and can provide significant value to both consumers and the energy system itself. The introduction of a load control licensing regime will help to facilitate a healthy and competitive market in which consumers and the system are protected and secure.

We are supportive of a new licensing regime, overseen by Ofgem, being established for load control and flexible service provider activities. However, we would stress the importance of Ofgem having suitable and sufficient resources and capabilities to ensure that it is able to process a likely significant number of licence applications during the 12-month transitional period. Any delays to granting licences prior to the prohibition coming into effect could lead to significant consumer detriment.

Our detailed responses to the consultation questions are provided below. We would be happy to discuss our response further, and should you have any questions please contact policy@OVOenergy.com.

Kind regards,

Jonathan Coe
Industry Change Manager, OVO

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? Please provide reasons for your answer.

Yes, however Ofgem should take into account where licence applicants are already demonstrating these principles via compliance with a pre-existing licence (e.g. already licensed suppliers).

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

On the subject of licence derogations, given the large number of existing supply licensees that are likely to apply for a load control licence, we suggest that Ofgem should consider issuing market-wide derogations to licensed suppliers against specific licence conditions, rather than granting individual derogations to specific licensees. This will avoid individual suppliers needing to apply for derogations, and should establish a regulatory framework that is easier for Ofgem to manage.

We have listed a number of licence conditions that we think should be subject to derogation for licensed suppliers in our response to DESNZ' consultation on the load control licence regulations and licence conditions. These include:

- SLC 4 (Financial Responsibility Principle)
- SLC 5 (Ongoing fit and proper requirement)
- SLC 8 (Requirements to comply with Industry Codes)
- SLC 11 (Treating consumers fairly)
- SLC 12 (Recommending suitable services and prohibiting mis-selling)

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.

Yes. We agree that applicants who already hold an electricity supply licence should not be required to answer all questions in the application form, on the basis that they are already required to meet a number of the obligations via their existing supply licence.

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

Yes, we agree that a 12-month transitional period is appropriate as this should give prospective licensees adequate time to apply for a load control licence once the application window is open. It is essential, however, that Ofgem has the capacity and capability to review applications and grant licences within this 12 month period, so as to not reach a position where parties, who have acted responsibly by applying for a licence in good time, find themselves in breach of the prohibition due to delays in the Ofgem licensing process.

This risks significant customer detriment, if a customer holds a contract with a supplier which may need to be terminated if the applicant has not received a licence by the point at which the prohibition comes into effect.

Furthermore, a timely decision on these consultations is needed, to give prospective applicants sufficient time to assess the new licence obligations and ensure that they are able to meet all requirements in the licence application process.

5. Do you agree with our proposed application process for certain licensed suppliers? Please provide reasons for your answer. Note, please refer to the DESNZ Licensing Consultation for a specific question on licence condition derogations.

Yes. We agree that applicants who already hold an electricity supply licence should not be required to answer all questions in the application form. As per our response to Question 2, we would support Ofgem issuing market-wide derogations to all compliant licensed suppliers against specific licence conditions.

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?

No comment.

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

No comment.

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? Please provide reasons for your answer.

Yes, we agree that the licence application process appears to strike the correct balance between avoiding unnecessary burden for licensed suppliers, who are already demonstrating compliance with a number of the new licence conditions through our existing supply licence requirements, and ensuring that consumers can expect appropriate protections and services from new entrants into the CLF markets.

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

We note Ofgem's assertion that 9 months is the average time taken to process a supply licence application. While the timetable for a load control licence may be shorter, due to the less complex nature of the licence, we do have concerns that the likely significant influx of applications during the 12 month transitional period could cause delays in Ofgem's assessment process.

It is essential that parties already offering flexibility services to customers do not find themselves in breach of the prohibition simply because Ofgem was not able to process their application in time. Ofgem therefore needs to ensure that it has the requisite capacity and capability to process a large number of licence applications in a timely manner, and should prioritise applications from parties who are already offering flexibility services to customers. If Ofgem is unable to commit to processing applications prior to the prohibition coming into effect, we would strongly encourage Ofgem and DESNZ to consider what contingency arrangements may be required for applicants whose applications remain in progress at the point at which the prohibition takes effect.

10. Do you agree with our proposal that tacit authorisation should not apply to the load control licence? Please provide reasons for your answer.

Yes, we agree. However, we would stress again that it is essential that Ofgem has the capacity and capability to process a potentially significant number of licence applications during the 12 month transition period, and that it does not reach a point where its failure to process applications in a timely manner leads to applicants being in breach of the prohibition once it comes into effect.

11. Should Ofgem reconsider the question of tacit authorisation in future? Please provide reasons for your answer.

No, given the direct customer impact, and risk of customer detriment, we do not think it is appropriate that tacit authorisation should be considered for this licensable activity.

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

We agree in principle. However we would stress, as Ofgem has recognised in the consultation, that efforts should be made to avoid duplicative RFIs or data requests where a party is both a licensed supplier and licence FSP/load controller. This is essential to avoid unnecessary burden on industry parties, at a time when resources are incredibly constrained due to the amount of work going on across the industry. We note that Ofgem is already undertaking work to modernise its regulatory reporting framework, and we believe that the introduction of this new licensing regime presents a good opportunity to design a more modern, lean and automated approach.

Ofgem should also ensure that it is requesting data and information for valid reasons, with clear rationale for why that data is needed and how it will be used. Requesting data for the sake of requesting data is not an efficient or effective use of regulatory powers, and places unnecessary burden on industry parties, where resource could be better deployed elsewhere.

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.

We would encourage Ofgem to develop their approach to market monitoring in the context of their set of new Consumer Outcomes. It is not clear to us what Ofgem intends to monitor in terms of customer switching, nor how this would interact with the Consumer Outcomes. Our current flexibility offerings are proposed as optional add ons to customers with existing supply contracts with OVO. It is therefore not correct to suggest that customers are able to 'switch' their CLF services in the same way that customers can switch supply. Further, while we note that switching can give an insight into market trends and 'health' of the sector, we would caution Ofgem from focussing solely on this. The CLF market is a nascent market, and switching between providers is not the only indication of competition.

Furthermore, as a number of flexibility propositions are currently bundled into supply contracts, there is a risk that tracking switching rates could lead to double counting, for example where a customer switches their supply contract, and also moves their flexibility proposition to the new supplier as part of that switch.

14. Are the proposed RFIs proportionate and manageable? Please provide reasons for your answer.

As per our response to Question 12, Ofgem should avoid issuing duplicative RFIs to parties who operate in both supplier and FSP roles. Furthermore, Ofgem should ensure that it has a clear rationale and intention with any data or information that it collects via RFIs, and that it is not simply requesting data for the sake of requesting data. There should be a clear end goal for requesting information, such as monitoring compliance, or to support policy or regulatory developments.

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? Please provide reasons for your answer.

The cost impact of responding to the proposed RFI will depend on how effectively Ofgem can tie these new data requests into existing RFIs which are issued under the supply licence. If duplicative RFIs can be avoided, we do not envisage incurring significant additional costs to provide this additional data.

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, we agree.

17. Are there additional factors we should consider when determining the level of compliance engagement for different types of licensees (eg new entrants vs licensed suppliers)? Please provide reasons for your answer.

Existing compliance arrangements in place for licensed suppliers should be utilised where possible to avoid additional resource or administrative burden on both Ofgem licensees operating in both the supplier and FSP/load controller roles.

18. Do you support the proposal to use informal account management relationships to support licensees into compliance in the early years? Please provide reasons for your answer.

Yes, we agree.

19. Do you agree with the proposed priority areas for compliance engagement? Please provide reasons for your answer.

Yes, we agree. Given the nascent nature of the market, and the likely influx of new licensees who have not previously been bound by licence obligations in terms of customer service, we think that focussing on obligations relating to treating customers fairly should be a priority.

We also agree that a primary reason why this licensing regime is needed is to ensure robust cyber security, and therefore agree that this should be an early area of focus for Ofgem's compliance monitoring.

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? Please provide reasons for your answer.

We agree in principle. However we would note that the proposed load control licence conditions are aimed at facilitating outcomes, rather than being prescriptive in terms of how those outcomes should be achieved. The enforcement arrangements for this licence regime should reflect this.

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

Yes, we agree that aligning enforcement monitoring where a single organisation holds both a supply licence and a load control licence is sensible. As per our response to Question 20, we note that the proposed load control licence conditions are aimed at facilitating outcomes, rather than being prescriptive in terms of how those outcomes should be achieved. The enforcement arrangements for this licence regime should reflect this.

22. Are the regulatory requirements for different types of Load Controller sufficiently clear? Please provide reasons for your answer.

Yes, however we would encourage Ofgem and DESNZ to consider how aggregate load is calculated. For example, there may be instances where a corporate group with multiple legal entities holds multiple load control licences. The cumulative load across all licences under the same group could easily exceed 300MW. However, under the regulations and licence conditions, each individual licensee, with a load below 300MW would not be subject to the

NIS regulations. This risks undermining the intention of the new cyber security rules.

23. Do you agree with the proposed approach to cyber security assessments for load control licence applications? Please provide reasons for your answer.

No comment, as OVO does not expect to operate as a Load Controller.

24. Do you agree with the proposed approach to cyber security monitoring and compliance? Please provide reasons for your answer.

No comment, as OVO does not expect to operate as a Load Controller.

25. What would you suggest is a reasonable equivalent of a CRA Audit? Please provide reasons for your answer.

No comment, as OVO does not expect to operate as a Load Controller.

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

No comment, as OVO does not expect to operate as a Load Controller.

27. Do you agree with our proposed approach to licence modifications? Please provide reasons for your answer.

Yes, we agree. However, it is essential that Ofgem takes into account any consequential impacts on the supply licence that may be caused by future proposed modifications to the load control licence, and vice versa. This is particularly important where derogations have previously been issued on the basis that licensed suppliers are already fulfilling certain load control requirements via their supply licence. Unnecessary or unconsidered deviations between the two licences could lead to intended consequences, and possible consumer detriment.

28. Do you agree with our proposed process for the transfer of a load control licence? Please provide reasons for your answer.

Yes, we agree.

29. Do you agree with our proposed approach to extending/restricting a licence? Please provide reasons for your answer.

Yes, we agree.

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? Please provide reasons for your answer.

Yes, we agree.

31. Do you agree with our proposed approach to cost recovery for the load control licensing regime? Please provide reasons for your answer.

Yes, we agree.