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18 February, 2026

Dear Ofgem team,

Many thanks for the opportunity to respond to this load control licensing consultation. Kraken has gladly engaged with the SSES process over the past two years and we continue to appreciate the teams' willingness to discuss the right way forward, including on licensing.

We have consistently challenged the licence proposal. While we agree that the emerging flexibility industry faces significant risks, we believe most of these risks are more effectively and proportionately mitigated through targeted regulatory and market interventions rather than through broad-based licensing requirements of the full delivery chain.

As the consultation points out, NESO advice signals the need for a dramatic increase in flexibility to strengthen energy security and decarbonise at lowest cost. We have made a slow but encouraging start towards this growth. But further expansion is by no means inevitable. The large amount of policy and regulation in this space, while potentially helping to make the sector more secure, each raises the cost of delivery, reducing the incentive to provide flexibility in the first place. Consumer consent, tariff interoperability, ESA regulations, licensing, NIS expansion, asset registration and poor market design (e.g. P415) all come at a cost. Individually these measures may appear proportionate; cumulatively they risk materially increasing barriers to entry, raising operating costs, and reducing the net value of consumer flexibility.



The question is not whether these risks exist but whether licensing is the most effective and efficient way to reduce the risks compared to credible alternatives, such that consumer confidence is maintained while innovation and growth continue.

Kraken firmly believes there is a better alternative: mirror and harness existing licensing structures (e.g. the supply licence) by regulating the market/consumer-facing activity, strengthen cyber requirements for system-critical actors via existing national security frameworks, and address grid stability primarily through market design reform, data sharing and transparency. This would retain the strongest elements of the proposal while avoiding unnecessary duplication and cost.

Consumer protections – SUPPORT

We agree that consumer protections are imperative and sustained flexibility growth is unlikely without them. FSP licensing requirements that heavily build off of supply licence requirements, with streamlined applications and potential exemptions for existing supply licence holders makes sense.

Cybersecurity – SUPPORT IN PART

Cybersecurity is also a significant risk if not managed effectively. We firmly support the Cyber Security and Resilience Bill's inclusion of large load controllers in scope. However, we are less convinced that expensive licensing requirements are required for smaller load controllers given the potentially limited impact of breaches of firms controlling e.g. a few thousand devices. These requirements could lock those load controllers out of the market, limiting innovation. There are two options for 'medium-sized' load controllers: either lower the MW threshold in the Cyber Security and Resilience Bill, or else require those load controllers to follow statutory guidance (which could require Cyber Essentials (Plus) certification, for example). We should not forget that there is also a commercial incentive for load controllers to remain secure.



Grid stability – REMOVE FOR ALL LOAD CONTROLLERS

Grid stability could also be a risk, although it is less clear how likely this risk is to materialise or how severe its impact would be. The best mitigation for this potential risk is to remove the problem at source. Destabilising activity could be the result of:

- A security breach
- Poor market design
 - Lack of granularity
- Incompetence (deliberate or otherwise)

Security breaches are addressed by cybersecurity mitigations.

Poor market design should be dealt with by improving the price signals that load controllers optimise around. Shorter settlement periods, dynamic network tariffs and direct compensation payments for aggregators are an example of how optimisation and scheduling can better reflect system conditions and provide value for doing the right thing. These should be pursued together with improved data availability on network capacity as a priority before any licence is considered.

The proposed licence would give some protections against deliberate incompetence (i.e. choosing a destabilising action despite price signals to the contrary). However, actors willing to deliberately destabilise the system are unlikely to be deterred solely by licence revocation risk, and inadvertent instability (e.g. poor product design) should become apparent through testing and validation, and certainly before the load controller is able to gain significant market share.



Even where market design is perfected and incompetence is minimised, a risk of highly-localised instability remains where a single provider is managing a large proportion of devices at a single location and where that provider is connecting to those devices via a single source, e.g. one OEM's backend or a single HEMS in the case of a multi-tenanted property. This could be at a block of flats managed by a housing association that has installed the same device in each home and contracts a single flexibility provider, for example. In this scenario, the load control signal is likely to trigger an identical response in all devices, which could cause local destabilisation. A licence condition to control for this unique set of circumstances would be disproportionate, however. We would favour guidance for load controllers on how to optimally approach such cases, rather than require all load controllers to go through an onerous licensing process when they may not present a risk.

Financial, management and operational controls – REMOVE FOR NON-CONSUMER-FACING LOAD CONTROLLERS

Financial, management and operational risks also exist but mitigation measures should sit with the FSP. It makes most sense for the FSP to manage financial risks, given they are the only party managing consumer funds and taking a market position. It is also optimal for the FSP to manage operational and management risks via its contracting (e.g. service level agreements with load controllers), rather than requiring each party to go through the licensing process.

There is no reason why these requirements should not be well managed by the FSP in its contracting with third parties, just as is the case with suppliers contracting third party vendors for other services like billing today. Were this not the case – i.e. were there a valid reason to manage load control differently – then it would make sense to licence the entire operational chain responsible for delivering CLF safely. Each part of the chain is essential for delivering that service. We think the best value for money lies in limiting the licensing exposure to a single party (the FSP) and allowing them to manage the risk within their supply chain through service level agreements.



This approach would mirror risk mitigation elsewhere in the energy sector (e.g. via supply licence). Extending these requirements beyond the FSP adds extra administrative costs with few additional protections. Again, it has to be in the FSP's commercial interest to ensure it can maintain service delivery.

Summary

In summary, we would urge DESNZ and Ofgem to target the most effective risk mitigation measures and reconsider extending licensing requirements to non-consumer-facing load controllers. This will add cost for little reward, stifle innovation by raising market entry barriers for new entrants and limit the value available to consumers. DESNZ should instead improve price signals and mirror existing market dynamics by utilising the FSP licence to ensure flexibility is stable and safe. Together with Ofgem it should then monitor market developments to better appreciate and tackle any remaining risks as they develop. Flexibility growth is imperative but not inevitable – our proposal best balances safety, consumer confidence and value for money to help ensure that growth happens.

Q1. 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.

The policy principles Ofgem outlines are a useful starting point. However, there is an important principle missing: value for money. For example, vibrant markets are only useful so far as they lead to procurement of services that provide value for money for all consumers. The consultation document hints at this through its mention of 'proportionate' regulation, but we recommend explicitly adding value for money for end consumers to Principle 3.



Q2. 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.

See response to question 1.

In trying to protect against an array of risks of varying likelihood/impact and in regulating various parts of the commercial delivery chain, we believe there is a significant risk that Ofgem and DESNZ's approach is disproportionate. A layered regulatory model – licensing FSPs, tiered cyber requirements for system-critical actors, and contractual risk management for the remainder – would better align regulatory intensity with risk.

This is clearly the case for the licence requirements that apply to all licensees: financial, management and operational. These risks are best mitigated by the client-facing party, or FSP. There is no reason why these requirements should not be well managed by the FSP in its contracting with third parties, just as is the case with suppliers contracting third party vendors for other services like billing today. Were this not the case – i.e. were there a valid reason to manage load control differently – then it would make sense to licence the entire operational chain responsible for delivering CLF safely. Each part of the chain is essential for delivering that service. We think the best value for money lies in limiting the licensing exposure to a single accountable party (the FSP) with clear end-to-end responsibility for consumer outcomes and service delivery, and allowing that party to manage the risk within their supply chain through service level agreements.

Q3. 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.



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The evidence requirements are significant. We don't think that the cost of meeting and complying with these are proportionate to the risk in all cases. It would be better to mirror other parts of the energy sector, e.g. supply licence, and require the customer-facing party to manage the risks they are best-placed to manage, such as financial and operational risks.

Q4. Do you agree with the proposal for a 12-month transition period? Please provide reasons for your answer.

As we have stated throughout this consultation process, we disagree with the need for a licence for non-consumer-facing load controllers at all. However, were this licence to go ahead, it would be right to allow a short transition period (e.g. 12 months). The risks are not material at present so there is no need for compliance obligations/enforcement to begin right away.

Q5. 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.

No comment.

Q6. 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.

Q7. Do you agree with our proposed application process for non-licensed suppliers? Please provide reasons for your answer.



No comment.

Q8. 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. Flexibility should be available to all consumers who seek it at lowest possible cost (or highest possible reward). Not duplicating administrative processes is a significant part of achieving this. Those FSPs with operational precedence but no licence should need to go through the full licensing process to provide confidence and integrity to the licence/sector.

Q9. Do you agree that our proposed timelines for licence application processing are reasonable? Please provide reasons for your answer.

Not wholly. There should be a commitment from Ofgem/DESNZ that any organisation that has submitted its application within the first three months of the application window should be able to continue operating irrespective of how long it takes Ofgem to issue the licence. Ofgem should absolutely prioritise avoiding a situation where existing load controllers have to halt operations – to consumer detriment – while they wait for a licence, particularly where that organisation has done everything asked of it in the application process, e.g. apply within three months.

Q10. Do you agree with our proposal that tacit authorisation should not apply to the load control licence? Please provide reasons for your answer.

No. Tacit authorisation should apply to existing load controllers for the reasons given above.



Q11. Should Ofgem reconsider the question of tacit authorisation in future?

Please provide reasons for your answer.

There is no reason why this shouldn't be reconsidered for new load controllers in the future once Ofgem understands the sector better.

Q12. Do you agree with the proposed approach to compliance-related monitoring? Please provide reasons for your answer.

Yes. However, as stated above, we do not believe non-consumer-facing load controllers providing financial or operational reporting is proportionate or provides the consumer value for money. This is better managed by the FSP through its supply chain management.

Q13. 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.

Mostly. It will be helpful to have reporting on the growth and state of the market and these metrics will support that. We think Ofgem should consider further qualitative or quantitative assessments of the market to assess whether the licence itself is delivering value for money.

Additionally, industry would need clarity on what exactly constitutes load control to understand what counts as a 'load control customer'. If a supplier has consumers that are both allowing it as an FSP to steer their device and consumers using the supplier's tariff information to optimise their device, do both count as load control customers, even if the supplier isn't doing any optimisation in the latter scenario? In the latter scenario, the customer's device is still being 'controlled' by an external logic, hosted by the OEM or a third party. In other words, it's not the customer that is



deciding when to turn on their heating/when to charge their car, etc. This is perhaps more a question for DESNZ but one that Ofgem should be aware of.

Q14. Are the proposed RFIs proportionate and manageable? Please provide reasons for your answer.

For FSPs, yes. The granularity should be sufficient to help identify trends/anomalies, etc. As stated above, we do not believe non-consumer-facing load controllers providing financial or operational reporting is proportionate or provides the consumer value for money. This is better managed by the FSP through its supply chain management.

Q15. 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.

We do not believe DESNZ's estimated costs are accurate. Quarterly reporting means an individual(s) collating and checking a large amount of information regularly. In staff costs alone, this could exceed the calculated amounts.

Q16. 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, because the sector is at an early stage of development – proportionality is key as we learn more about the emerging risks.



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Q17. 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.

We don't think so. The licence itself will be new for all parties so we don't think there is a rationale for differentiated compliance engagement.

Q18. 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. This will be new for some FSPs and the market itself is evolving. It makes sense to maintain a collaborative approach in the early years to ensure the market has a chance to innovate, grow and learn, without posing a significant risk to consumers.

Q19. Do you agree with the proposed priority areas for compliance engagement? Please provide reasons for your answer.

We completely agree that cyber security and treating consumers fairly are the right priority areas. As stated above, financial and operational controls are important for the FSPs to provide given their direct relationship with the consumer and the fact that they will manage and trade consumer funds. The same is not true of non-consumer-facing load controllers – these risks are better managed by the FSP through its supply chains.

Q20. 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.



Yes. It makes sense to align with existing enforcement approaches to reduce administrative burdens.

Q21. Do you agree with our proposed enforcement approach for multiple licence holders?

Yes

Q22. Are the regulatory requirements for different types of Load Controller sufficiently clear? Please provide reasons for your answer.

Yes they are clear, although we disagree with them for the reasons given in the introduction.

Q23. Do you agree with the proposed approach to cyber security assessments for load control licence applications? Please provide reasons for your answer.

It is hard to give a full answer because we don't yet know what is in the CAF profiles. Where we do agree with the proposal is that DESNZ/Ofgem should apply more stringent controls to large load controllers – specifically those controlling a 'system critical' amount of load. It is right that this is being addressed by Cyber Security and Resilience Bill. We also agree that smaller load controllers should have suitable cybersecurity measures in place and that these will not be as stringent as those for larger load controllers.

Where we disagree is that this needs to be managed via a licence for smaller load controllers. At this early stage in the market's development we believe it is likely sufficient for smaller load controllers to adhere to statutory guidance on cyber security, with requirements that are proportionate to their size. For example, very



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small load controllers – e.g. those controlling a few thousand devices – shouldn't face the same cybersecurity costs as those controlling tens of thousands.

Q24. Do you agree with the proposed approach to cyber security monitoring and compliance? Please provide reasons for your answer.

Yes, although it is hard to comment fully without detail of the CAF profiles.

Q25. What would you suggest is a reasonable equivalent of a CRA Audit? Please provide reasons for your answer.

We suggest Cyber Essentials and ISO27001 would be appropriate for smaller load controllers to provide annual security assurance, rather than NCSC CAF and CRA audits.

For larger load controllers we suggest compliance with ISO27001, Cyber Essentials Plus and SOC2-2 would also be equivalent, removing the need for an additional CRA audit.

Q26. Do you agree with the inspection process outlined for the cyber security of below 300MW Load Controllers? Please provide reasons for your answer.

It is good to use the NIS regulations as a template. It may be that a lighter version is more suitable for very small load controllers.

Q27. Do you agree with our proposed approach to licence modifications? Please provide reasons for your answer.



It would make more sense to provide clearly defined statutory exemptions rather than case-by-case derogations, as exemptions provide greater legal certainty, reduce administrative burden, and better support investment planning.

Otherwise we agree with the modifications process.

Q28. Do you agree with our proposed process for the transfer of a load control licence? Please provide reasons for your answer.

Yes. Please note that we disagree that licensing is the best way to mitigate the risks non-consumer-facing load controllers pose.

Q29. Do you agree with our proposed approach to extending/restricting a licence? Please provide reasons for your answer.

Yes. Please note that we disagree that licensing is the best way to mitigate the risks non-consumer-facing load controllers pose.

Q30. 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, although licensees should be given time to rectify any noncompliance before a revocation happens. Please note that we disagree that licensing is the best way to mitigate the risks non-consumer-facing load controllers pose.

Q31. Do you agree with our proposed approach to cost recovery for the load control licensing regime? Please provide reasons for your answer.



Yes. Provided these services are truly interoperable, available to all and beneficial to all (which good optimisation should be), we agree that it makes sense to spread these costs across all consumers via a trusted mechanism.

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