

To Load Control Licensing Team, Department for Energy
Security and Net Zero (DESNZ)
and Decentralised Energy System team, Ofgem

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Dear DESNZ and Ofgem teams,

Response to DESNZ and Ofgem Smart Secure Electricity Systems (SSES) consultations on load controller licensing

This is a response to both the DESNZ's consultation on the draft load control licence regulations and conditions¹ and Ofgem consultation on implementing the licensing regime.² We have combined our responses as there are many linked issues in the consultations and in our response. The response is submitted on behalf of SSE Energy Customer Solutions.³

We support the general objectives of the SSES programme to establish the right technical frameworks to help unlock the potential of demand side flexibility, improve the security (and resilience) of the electricity system and give consumers the confidence to engage in these new activities.

However, **there needs to be greater clarity as to the practical activities that will require a load control licence before it is possible to proceed to implement the load control licensing regime.** For example, many building or home energy management solutions (BEMS/HEMS) appear to be required to get a load control licence, even where they do not directly control any EVs, EV charge points, electrical heating appliances or BESS, and are not partaking in energy flexibility markets / helping to balance the grid. Additionally, many Energy Smart Appliance (ESA) manufacturers who provide apps to control their devices appear to be required to hold a load control licence as control signals will be sent via their cloud platforms.

Considering the uncertainties as to the scope of activities that will require a licence and nascency of the broader consumer-led flexibility market, **the proposed timeline for entities to apply for a load control licence by end March 2027 and then for licence to be switched on by end 2027 is problematic.** We would practically suggest:

- The timeline for introducing the licence is only confirmed once there is a wide understanding of the scope of activities that will require a licence. This is because the preparation organisations can do for the licensing regime is limited until they are able to clearly understand the scope of activities that will require a licence.

¹ [Smart Secure Electricity Systems \(SSES\) Programme: draft load control licence regulations and conditions - GOV.UK](#)

² [Smart Secure Electricity Systems: Implementing the load control licensing regime | Ofgem](#)

³ SSE Energy Customer Solutions encompasses SSE's customer facing businesses, including Business Energy (our licensed non-domestic supply business), wider activities investing in, building and connecting local energy infrastructure, and smart buildings and flexibility.

- There then needs to be at least a year for entities to commercially prepare for regulation, for example to amend existing customer contracts where appropriate.
- There should be further consideration of the use of tacit authorisation to license those already operating in the market, as has been done for heat network regulation.
- The end of the transitional period (i.e. the point at which the load control licence is switched on) should remain flexible until DESNZ and Ofgem are confident that organisations doing licensable load control activities have registered (if tacit authorisation is used) or applied for and been granted a licence. This would ensure that the delivery of existing services to consumers is not abruptly disrupted by the introduction of regulation.
- Ultimately, the whole timeline for introducing load control licensing should be designed to complement wider initiatives that are seeking to boost consumer-led flexibility, to ensure that new regulation does not hold back the achievement of consumer-led flexibility targets.

On an enduring basis, **it is important that load control licence conditions complement the existing supply licence and wider cyber assurance frameworks already in place across the energy sector. Additionally, there is a need to ensure the enduring regulatory burden associated with applying for / holding a load control licence is proportionate.**

We have included responses to the individual questions posed in the DESNZ and Ofgem consultations in separate appendixes to this cover letter.

We would be happy to discuss our response further, and generally we're happy to provide any more information (e.g. regarding activities in the HEMS/BEMS space) that can help support DESNZ and Ofgem's development of the load control licensing regime.

Our response is not confidential.

Yours sincerely,

Graeme Barton

Regulation Manager

Appendix 1: Responses to individual questions within DESNZ consultation

1. With reference to regulation 4 and inserting new sub-sections (3J)(a) and (3K) into section 4 of the Electricity Act 1989, do you agree with the proposed load controller licensable activity, noting that it distinctly captures organisations creating a load control signal, changing a load control signal, and controlling the timing of sending a load control signal where controlling the timing of sending a load control signal is for the purpose of effecting load control? Please explain your answer and if you disagree provide alternative suggestions.

We believe the proposed load control licensable activity has unclear practical implications. At a conceptual level it makes sense to capture the creation, changing and controlling the timing of load controls as licensable activity, but we strongly believe that further detail is needed in regulations or in associated guidance how this practically maps against activities done by entities in the broad flexibility space.

Notably, it is unclear if Home Energy Management Systems (HEMS) and Building Energy Management Systems (BEMS) providers fall in scope of this proposed licensable activity if they do not directly control any EVs, EV charge points, electrical heating appliances or BESS and if they are not participating in energy flexibility markets (i.e. they are not partaking in 'consumer-led flexibility' or doing load control for the purpose of demand-side response). Similarly, it is unclear if Energy Smart Appliance (ESA) manufacturers who provide apps to control their devices appear to be required to hold a load control licence as control signals will be sent via their cloud platforms.

Related to this, it is vital that there is clear guidance as to 'intermediaries' that will be in scope of future licensing and its associated requirements. Many different entities are involved in the load control signal chain and component supply chain, so to avoid regulatory confusion, there needs to be clear guidance as to what entities are in scope of licensing and which ones are not. While doing this, care must be taken to ensure that excluding some intermediaries from the scope of regulation does not create a back-door security and resilience risk in future load control systems.

Additionally, we believe the focus on Energy Smart Appliances (ESAs) might complicate the regulations and cause confusion. We find the definition of ESA, which we appreciate is already defined via the Energy Act 2023, to be broad and vague and as a result the perception is that the scope of licensable activity is unclear. Although there will be an exemption order to focus licensing on specific appliances, it would be easier for industry parties to understand if less focus is placed on the term ESAs and instead there is direct reference to the load control of certain private EVs, EV charging points, electrical heating appliances and BESS as being a licensable activity, rather than load control of a defined list of ESAs being in scope.

2. With reference to regulation 4 and inserting a new sub-section (3J)(b) into section 4 of the Electricity Act 1989, do you agree with the proposed FSP licensable activity? Please explain your answer and if you disagree provide alternative suggestions.

In line with our response to question 1 above, we believe further clarity is needed as to how the licensable activity is translated against practical activities by various entities across the flexibility space.

3. With reference to regulations 4 (amending section 4 of the Electricity Act 1989) and 6 (amending section 6 of the Electricity Act 1989), do you agree with the rest of the proposed drafting to make load control a licensable activity and authorising Ofgem to grant load control licences? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

Yes we agree with this proposed drafting.

4. Do you agree with the ESA definitions outlined in this section and the intent to align the ESA definitions of the exemptions order with first phase ESA regulations (where applicable), noting that organisations will need to identify whether they are required to hold a licence based on the scope and definitions outlined (although, please also note it is only load controllers and FSPs that exclusively undertake out of scope activity that will not require a licence)? If not, please specify the definitions you disagree with, alternative suggestions or ways to mitigate your implementation concerns and your rationale.

Building on response to question 1, we find that the focus on ESAs might complicate the regulations and the vague and broad definition of ESAs could result in misinterpretation of the scope of load control licensing. Instead, we question if more direct reference could be made in regulations to licensing focusing on load control of certain private EVs, EV charging points, electrical heating appliances and BESS.

That being said, we recognise DESNZ's current proposal is that the yet to be drafted exemptions order will clarify that only load control of certain appliances will be in scope for regulation. We broadly agree with the scope of appliances captured here as this will help to target licensing at those load controllers in the broad domestic / small non-domestic space.

However, we question if the definition of BESS may be too narrow and not truly restrict the scope of licensing to BESS assets in the domestic / small non-domestic space. To avoid a scope creep of licensing to load controllers who are not engaging with assets in the domestic / small non-domestic space, we question if a clause could be added to explicitly ensure grid-scale BESS are exempted. For example, a clause could be added to specifically state that BESS is not in scope if it is 'front of meter', used for generating electricity under a generation licence or if that BESS individually trades in the wholesale electricity market. Such large-scale BESS would evidently not be in the domestic / small non-domestic space and load control of these assets should be beyond the scope of licensing. Additionally, load controllers of grid-scale BESS will often be considered an Operator of Essential Service under NIS Regulations as their load control activities will often surpass 300MW so the risk of excluding grid-scale BESS from these regulations is low.

We note the definitions for EVs, EV charge points and electrical heating appliances in scope of licensing already explicitly exclude larger scale or business-use appliances.

5. Do you agree with using the small business consumer definition to determine the additional consumer-based exemption for FSPs? Please explain your answer and if you disagree provide alternative suggestions.

We generally agree with the small business consumer definition used for the FSP exemption for the need to hold a licence. Flexibility in the domestic and small non-domestic sphere has significant potential and will compromise a significant portion of the 10-12GW of consumer-led flexibility we aim to realise by 2030. NESO's FES 2025 Holistic Transition then anticipates 74.6GW of consumer-led flexibility, including a significant 40.6GW of flexibility from Vehicle to Grid, by 2050. Accordingly, it makes sense to focus regulatory attention at the domestic and small non-domestic sphere.

Licensing of FSPs who only provide services to larger non-domestic consumers is disproportionate at this time based on these projections too. Of the 10-12GW consumer-led flexibility target, only 1.7GW of flexibility is predicted from industrial and commercial sphere by 2030 within NESO's FES 2025 Holistic Transition. This industrial and commercial flexibility is only predicted to increase to 3.9GW by 2050 within the FES 2025 Holistic Transition.⁴

6. Do you think government should consider any further exemptions? If so, please specify which exemption(s), the approach you would take to the exemption(s) and your rationale.

It may be worth considering if a 'de-minimis exemption' to help enable new entry and innovation in the market. For example, this could exempt those who control less than 1MW of load from in-scope ESAs and have no contracts with / assets controlled by domestic customers from the need to hold a licence. This exemption would mirror some of the principles behind other non-domestic supply exemptions that already exist. This would support innovation, possibly helping to encourage suppliers to trial flexibility / load control activities while the market is still nascent, but retain a clear bar at which point entities would need to become licensed. The small 1MW threshold would also mean the risk of such an exemption would be low.

If such an exemption is not included, then it may instead strengthen the case for tacit authorisation of new entrants to the market who control a very small amount of load. We discuss this in response to question 10 and 11 in the Ofgem consultation.

7. Do you agree with a 12-month transitional period being written into legislation? Please explain your answer and if you disagree, provide alternative suggestions.

We do not agree that a specific transitional period should be written into legislation considering the uncertainty regarding the scope of activities that will require to be licensed. This uncertainty means the overall proposed timeline for implementing load control licensing is unachievable.

⁴ See summary table in the Clean Flexibility Roadmap, July 2025: [Clean Flexibility Roadmap](#)

We think it would be better to have flexibility in the regulations as to the end of the transitional period and give DESNZ and Ofgem flexibility as to when the load control licence is switched on. One option could be for Ofgem to determine the end of the transitional period with a direction, which is first subject to consultation with industry. This would help to mitigate the risk of licensing going live before all required parties have applied for and being granted a licence – either because of confusion as to whether they will require a licence or because of delays in Ofgem processing a large number of licence applications.

8. With reference to regulations 8-15 and Schedule 1, do you agree with the proposed amendments to the Electricity Act 1989, the Utilities Act 2000 and the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2019, noting that Ofgem are separately consulting on the detail of the load control licence application form? Please explain your answer and if you disagree provide alternative suggestions where relevant.

Subject to our wider comments on the regulations, we agree with these wider proposed amendments.

9. With reference to regulation 16 and Schedule 2, do you agree with the approach to bring FSPs within scope of the existing statutory framework to regulate complaints handling standards and ADR, noting that this:

a. Will require FSPs to comply with regulations 1 -7, and 11 of The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008;

b. Will require FSPs to participate in the Energy Ombudsman ADR scheme.

Please explain your answer and if you disagree provide alternative suggestions.

We agree with these proposals, but there will be a need to ensure the complaint processes for FSPs are complementary to those used for suppliers and do not create any issues for suppliers who are also FSPs.

10. With reference to paragraph 2(3) of Schedule 2 of the draft regulations, do you agree that regulation 9 of The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not apply to FSPs until a future time when government and Ofgem deem it appropriate to extend consumer advocacy services to this market? Please explain your answer and if you disagree suggest when you think it would be appropriate for consumer advocacy services to extend to this market, whether that be for the launch of the licence or another specific time.

We agree with this proposal.

11. With reference to licence condition 3 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this licence condition, noting that to meet the requirement the licensee would need to have direct ownership or legally enforceable rights over assets,

mechanisms or arrangements such as but not limited to premises, facilities, staff, equipment, IT systems and brand name? Please explain your answer and if you disagree provide alternative suggestions.

We agree with proposed licence condition 3 regarding operational capability. However, when Ofgem seek to monitor this licence condition in future, it will need to ensure load controller licensees have the option of discharging this requirement in a joined-up way with similar reporting requirements for wider licensed supply activities done within the same corporate group.

12. In the impact assessment accompanying this consultation we assume that licence condition 3 creates no additional costs. Do you agree with this assumption? If not, please provide a rationale and details of the additional costs that condition 3 would entail for your organisation. When calculating these costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include as much supporting evidence as possible in your response.

Unfortunately, considering our uncertainties as to the scope of our activities that will be caught by load control licensing, we are unable to comment on the cost of implementing the licensing regime and the licence requirements in it. We suggest a full impact assessment to support the decision on implementation of the licensing regime can only be done after there is greater clarity on the scope of licensing.

13. With reference to licence condition 4 and the relevant definitions in licence conditions 1 and 2, do you agree that the drafting of this licence condition is the right approach to proportionately promote financial responsibility in the market? Please explain your answer and if you disagree provide alternative suggestions.

We agree with proposed licence condition 4 with a financial responsibility principle. However, when Ofgem seek to monitor this licence condition in future, it will need to ensure load controller licensees have the option of discharging this requirement in a joined-up way with similar reporting requirements for wider licensed supply activities done within the same corporate group.

14. With reference to licence condition 5 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions.

We agree with proposed licence condition 5 with an ongoing fit and proper person requirement. However, we suggest the timeline for introducing this requirement in a load control licence should not be before the equivalent licence changes are made to generation and other licences. Aligning the timeline for introducing this requirement into different licences will ensure efficiency across the energy sector as it will help align with wider implementation plans already in flight on this across corporate groups like SSE.

Additionally, when Ofgem seek to monitor this licence condition in future, it will need to ensure load controller licensees have the option of discharging this requirement in a joined-up way with similar reporting requirements for wider licensed supply activities done within the same corporate group.

15. Which additional costs would your organisation face for complying with licence conditions 4 and 5? Please comment on the management cost assumptions in the impact assessment. When calculating these costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include an explanation of the additional costs you may face, such as additional FTE, and why the additional costs are necessary to comply. Please include as much supporting evidence as possible in your response.

Unfortunately, considering our uncertainties as to the scope of our activities that will be caught by load control licensing, we are unable to comment on the cost of implementing the licensing regime and the licence requirements in it. We suggest a full impact assessment to support the decision on implementation of the licensing regime can only be done after there is greater clarity on the scope of licensing.

16. With reference to licence condition 6 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed drafting of this condition, noting that we have not included obligations related to data retention? Please explain your answer and if you disagree provide alternative suggestions.

We agree with proposed licence condition 6 regarding provision of information to Ofgem and Secretary of State. However, as also noted in response to questions in the Ofgem consultation, Ofgem needs to ensure future RFIs and regulatory submissions required by load control licensees do not impose a disproportionate regulatory burden. Where possible, Ofgem should seek to request information in a joined-up way with similar reporting requirements on licensed suppliers.

17. With reference to licence condition 7 and the relevant definitions and interpretation set out in licence conditions 1 and 2, do you agree with the proposed drafting of this condition? Please explain your answer and if you disagree provide alternative suggestions.

We agree with proposed licence condition 7 regarding the principle to be open and cooperative. However, when Ofgem seek to request information in the future, requests for information from load controllers are done in a joined-up way with similar reporting requirements for wider licensed supply activities done within the same corporate group.

18. With reference to licence condition 8 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this condition? Please explain your answer and if you disagree provide alternative suggestions.

19. With reference to 8.4 – 8.10 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed provisions to support the functioning interaction between codes and the licence? If not, please specify which provisions you disagree with and your rationale.

20. Do you agree with our intention to create a framework to empower industry to manage grid stability risks posed by load controllers, by having a licence condition that requires load controllers to accede to, and comply with the relevant sections of The Grid Code via Connection and Use of System Code (CUSC) and The Distribution Code via Distribution Connection and Use of System Agreement (DCUSA)? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

In response to questions 18-20, we agree with the general principle that industry codes are the best place to impose any requirements on load controllers that are necessary to manage grid stability. However, we are wary about the implementation of this licence condition requiring load controllers to comply with or accede to five different industry codes (BSC, Grid Code, Distribution Code, CUSC and DCUSA).

First of all, we question whether load controllers need to comply with or accede to all of these codes – could the requirement be rationalised? Or could the imposition of this requirement be delayed until Ofgem's strategic code reform is introduced, which will itself consolidate these five codes into three codes? Grid Code and Distribution Code are set to be consolidated into one Electricity Technical Code, and CUSC and DCUSA are set to be consolidated into one Electricity Commercial Code. Imposing a requirement to sign up to these separate codes before they are consolidated, especially before any specific code requirements are introduced that are relevant to load controllers, appears to be inefficient.

Complying with or acceding to all these codes will be a substantial undertaking for load controllers, costing a significant amount of money and time. It will be very challenging for load controllers to do this before applying for a load control licence. If such a licence condition is necessary, it should be a backstop date included in the licence condition to only require load controllers to do this within 12 or 18 months of the load control licence being turned on.

Additionally, a clear expectation should be placed upon code administrators / code managers to support load controllers' efforts to sign up to codes and also to proactively reach out to load controllers when new requirements are added to industry codes that could impact them.

Finally, the wider provisions in sections 8.4 – 8.10 appear sensible.

21. With reference to licence condition 9 and the relevant definitions in licence conditions 1 and 2, do you agree with the draft cyber security licence conditions, noting that many are modelled on the NIS Regulations but adapted for load controllers? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

We agree in principle with draft licence condition 9 regarding the cyber assurance framework, but the practical implementation of this is key.

Firstly, it will be very important that cyber security framework for load controllers complements what is already in place across the wider energy sector, especially for large organisations like SSE that span the full energy sector. We want to avoid a confusing situation whereby radically different cyber security and resilience expectations regarding are placed on load controllers versus wider expectations placed on generators or suppliers.

Building on this, it will also be important to align the development of the two load controller CAF profiles with the introduction of the load controller licensing regime. Accordingly, we do not think any requirements regarding tier 2 CAF profile should be turned on until the tier 1 CAF profile is finalised, considering some load controllers will be working towards the tier 1 CAF profile or could any time move from being assessed against the tier 2 CAF profile (when under 300MW) to being assessed against the tier 1 CAF profile (when over 300MW).

We also note it will be important to understand when organisation that controls under 300MW could be deemed to be an OES under the NIS Regulations and be assured against the tier 1 CAF profile.

Additionally, consistent with our wider points about the need for clarity on the scope of licensing, there needs to be clear guidance as to what entities are in scope of reporting on cyber security and resilience as load control activities can have complicated signal and component supply chains. While doing this, care be taken to ensure that excluding some intermediaries from the scope of regulation does not create a back-door security and resilience risk in future load control systems. We want to ensure the cyber security and resilience framework is holistic. For this, we'd suggest an illustrative NIS guidance overlay could be very helpful to articulate what falls in scope and how the CAF frameworks have been adapted for load controllers.

22. Do you agree with proposed 18-month period for newly licensed organisations to demonstrate meeting CAF requirements? Please provide your views on whether this period is appropriate, whether Ofgem's discretion to grant extensions is sufficient, and if there are any specific factors or challenges that should be considered when finalising the implementation timeline.

We agree with the proposal that newly licensed organisations should be able to demonstrate how they meet CAF requirements within 18 months. It will be vital that it is clear when the clock starts on this 18-month period and when this time-period runs until – we assume this is 18 months after the end of the transitional period? In other words, is this 18 months from the date at which the licence is switched on (currently proposed to be late 2027), rather 18 months from the date the final CAF profile is published in summer 2026?

However, we are unsure how this aligns with Ofgem's wider approach on assurance against CAF profiles. Generally, CAF assurance should not be treated as a black/white compliance issue that has to be done by a certain date. We recognise that all organisations will be on their own journey to improve their assessment against a CAF profile.

Linking to question 23 in Ofgem consultation, we question how much detail Ofgem's licence application process expects applicants to include with respect to their approach on cyber security and resilience. We

are unsure how much detail applicants can realistically be expected to provide in a licence application if there is a wider 18-month timeline for new licensed organisations to demonstrate how they meet CAF requirements.

23. With reference to licence condition 10 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

We disagree with the introduction of licence condition 10 regarding a load control check requirement. Although we understand the broad intent, we believe the practical actions required to comply with this licence condition are unclear and the licence condition could create a disproportionate burden on load controllers to monitor ESAs and systems/networks they do not own and cannot reasonably be expected to understand. We believe codes would be better placed to consider whether specific requirements should be imposed on load controllers to help ensure their actions do not have negative impacts on the grid or ESAs.

24. Which additional costs would your organisation face for complying with licence condition 9? Please comment on the cyber security cost assumptions in the impact assessment. When calculating additional costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include an explanation of the additional costs you may face, such as additional FTE, and why the additional costs are necessary to comply. Please include as much supporting evidence as possible in your response.

Unfortunately, considering our uncertainties as to the scope of our activities that will be caught by load control licensing, we are unable to comment on the cost of implementing the licensing regime and the licence requirements in it. We suggest a full impact assessment to support the decision on implementation of the licensing regime can only be done after there is greater clarity on the scope of licensing.

25. Do you agree with the definition of small business consumer for the purposes of determining which non-domestic consumers are in scope of consumer protections? Please explain your answer and if you disagree provide alternative suggestions.

We agree with the definition.

26. With reference to licence condition 11 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

We agree with draft licence condition 11 regarding treating customers fairly. It's important this is complementary to existing supply licence conditions 0 and 0A regarding treating domestic and non-domestic customers fairly.

27. With reference to licence condition 12 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

We agree with the intent of draft licence condition 12 regarding recommending suitable services and we agree that this condition from the supply licence conditions should be replicated into the load control licence. To help parties overcome the challenge of engaging customers regarding new services in an evolving market and ultimately help realise targets on consumer-led flexibility, we suggest that Ofgem's activities monitoring this licence condition should result in the sharing of best practice across industry to help reduce the risk of any FSPs mis-selling new services to customers.

28. Do you agree with the terms that are included in the "Principal Terms" definition? If not, please specify which terms you disagree with.

29. Do you think there should be any additional terms included in the "Principal Terms" definition? If so, please provide suggestions.

In response to question 28 and 29, we have no comments on the Principal Terms definition at this time but recognise that it may need to evolve in time as flexibility services evolve.

30. Which additional costs would your organisation face for complying with licence conditions 11 and 12, as well as the requirement to offer complaints procedures and contribute to dispute resolutions? Please comment on the customer protection cost assumptions in the impact assessment. When calculating additional costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include an explanation of the additional costs you may face, such as additional FTE, and why the additional costs are necessary to comply. Please include as much supporting evidence as possible in your response.

Unfortunately, considering our uncertainties as to the scope of our activities that will be caught by load control licensing, we are unable to comment on the cost of implementing the licensing regime and the licence requirements in it. We suggest a full impact assessment to support the decision on implementation of the licensing regime can only be done after there is greater clarity on the scope of licensing.

31. With reference to licence condition 13 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

While we broadly agree with proposed licence condition 13 that will require FSPs to set out clear steps for customers to exit a service, we note there is a risk that many customers may simply disengage with FSPs (e.g. just choose to manually override the load control services) rather than purposefully exit the service. Accordingly, the practical implication of this licence requirement may need to be further considered.

32. Do you think that load controllers should also be subject to a requirement similar to licence condition 13.2? If so, please provide your rationale.

At this time, we do not think there is a need to add any requirement on load controllers to ensure they do not unduly prevent, restrict or delay a customer from entering into a contract with another entity. While we agree that load controllers should not do this, we believe this could be a complicated issue to introduce a licence requirement on at this time. There is a risk of conflict between load control signals sent by different entities and load controllers may need time to manage devices to prevent issues arising in the future.

33. Government wants to build its evidence base for more detailed policy appraisal. Could you set out how additional costs could potentially arise for FSPs from complying with licence condition 13 and could you quantify these? When calculating additional costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include an explanation of the additional costs you may face, such as additional FTE, and why the additional costs are necessary to comply. Please include as much supporting evidence as possible in your response.

Unfortunately, considering our uncertainties as to the scope of our activities that will be caught by load control licensing, we are unable to comment on the cost of implementing the licensing regime and the licence requirements in it. We suggest a full impact assessment to support the decision on implementation of the licensing regime can only be done after there is greater clarity on the scope of licensing.

34. With reference to licence condition 14 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

We broadly agree with proposed licence condition 14 that will require FSPs to ensure exit fees are proportionate, but we note that this may be complicated in reality as FSP services could be bundled with other services, such as electricity supply or ESA installation. Ofgem will just need to appreciate the nuances of bundled load control services in their monitoring of this licence condition.

35. Do you think licence condition provisions enabling derogations from certain licence obligations should be included in the load control standard licence conditions, either to mitigate risks of duplicative regulation or for other reasons? Please explain your answer and provide a

rationale. If you think derogations from certain licence obligations should be included, please specify which licence obligations you think these should apply to.

We agree the licence should have provisions to enable Ofgem to grant derogations. For example, it may not always be appropriate to require the same supplier and FSP to separately report on equivalent conditions in supply and load control licence and, in such instances, it may be appropriate for that entity to have a derogation from certain requirements.

However, where instances of conflict with existing supply or other licence requirements are identified, then exemptions should be hard-coded into licence or transparent market-wide derogations should be issued that are easily understood by all. There is a risk in unfairness in the regulatory framework if certain licensees receive derogations that are not known about by others in the market.

Appendix 2: Responses to individual questions within Ofgem consultation

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.

We generally agree these are the correct principles to guide the development of Ofgem's implementation approach. We think the focus on Ofgem's Growth Duty is key – the implementation of the new regulatory regime should seek to ensure that the introduction of regulation does not hinder the delivery of existing services to customers or hinder the growth of new markets, and generally ensure the regulatory burden is proportionate.

Building on the Growth Duty, as explained in response to other questions, we believe the regulatory burden from load control licensing could be substantial and DESNZ and Ofgem's proposals need to consider how to ease the regulatory burden further.

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.

As noted in answers to various questions in the DESNZ and Ofgem consultation, we believe there are many ways in which the regulatory burden should be reduced. Notably, we suggest regulatory burden could be reduced with:

- Increased clarity on the scope of regulation.
- More realistic timelines for introducing regulation considering this uncertainty and breadth of activities needed to be done.
- Possible tacit authorisation for those entities already operating in the market or entering market with small scale operations, minimising the need for operators to prepare detailed licence applications and for Ofgem to grant licences in a set time period.
- Less onerous reporting requirements once licences are granted.

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.

We believe the generic questions in the licence application form are fine as these mirror the details that wider applicants must provide.

However, it is hard to confirm how feasible it will be to fill in the load control specific sections in application form while the specific licence conditions are still to be confirmed. We believe that the implementation approach can only be confirmed after other load control licensing policy framework is confirmed by DESNZ.

Additionally, the planned short time frame (possibly around 6 months) between confirmation of the load control licence requirements and the deadline by which applications would need to be submitted will make it challenging for applicants to pull together detailed information on various requirements. Notably:

- Detail regarding plans to comply with various consumer protection licence requirements: Applicants may not yet have full details on their plans on these various requirements.
- Detail on aggregate load upon application: Some types of market participants, such as HEMS/BEMS providers may not yet have full knowledge of the load connected in the homes/buildings they control. If HEMS/BEMS are indeed in scope of licensing, some of these providers will need additional time to develop processes to confirm the specific load they control as currently they be removed from this detail.
- Detail on intent to comply with or accede to industry codes: Since future code requirements imposed on load controllers are unknown, it will be hard for applicants to detail how they will comply with them. We suggest applicants only need to evidence a plan to sign up to codes.
- Detail on plans to comply with CAF profiles: We question if it is reasonable to expect applicants to provide detailed plans on this during the application process considering the proposal is that licensees would only be expected to be evidencing compliance against CAF profiles 18 months after licence requirements are turned on.

As such, we believe the detail required in a licence application should be reduced or possibly tacit authorisation considered more for existing operators.

Finally, it is important that Ofgem seeks to work cooperatively with entities apply for a licence and ensure there is time/capability to offer bilaterals with companies considering applying for a licence.

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

As per our response to DESNZ question 7, we have concerns regarding the implementation timeline for the load control licence.

Regarding the transition period, we think it would be better to have flexibility in the regulations as to the end of the transitional period and give DESNZ and Ofgem flexibility as to when the load control licence is switched on. One option could be for Ofgem to determine the end of the transitional period with a direction, which is first subject to consultation with industry. This would help to mitigate the risk of licensing going live before all required parties have applied for and being granted a licence – either because of confusion as to whether they will require a licence or because of delays in Ofgem processing a large number of licence applications.

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.

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?

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

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.

In response to questions 5-8, we repeat our concerns around the timeline for implementing load control licensing and for applications to be submitted and our caution around the amount of information that applicants will be required to submit.

We also believe the streamlined licence application process proposed for licensed suppliers should also be extended to licensed non-domestic suppliers. Existing licensed non-domestic suppliers also have all of the equivalent consumer protection included in the draft FSP licence conditions in their supply licence (for example supply licence condition 0A to treat all non-domestic customers fairly) and therefore it is also reasonable for such all licensed suppliers to have a lighter touch application process.

We also suggest that the light touch application process should not just be when the same registered company applying for a load control licence is also a licensed supplier. We also suggest this light-touch approach should also be open for registered companies who are related to a licensed supplier in the same group of companies. We suggest this includes companies who are subsidiaries of licensed suppliers or companies who share the same parent company as a licensed supplier.

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

We disagree with the timelines for introducing load control licensing and, as part of this, the time afforded to processing licence applications. Firstly, only affording applicants three months to submit applications will be problematic – as explained in answer to other questions. This timeline for applications should be extended.

The proposal is for Ofgem to have nine months to process applications and grant licences may be reasonable, but we believe that the scope of activities caught by load control licensing is potentially very broad (capturing BEMS/HEMS service providers and also ESA manufacturers) and the licensing regime as currently drafted will result in a much higher number of licence applications than DESNZ envision. We are worried that any delays Ofgem experience processing applications could result in delays granting licences and the risk that applicants who have submitted applications in time will not receive a licence before the licence go-live date. This poses a significant risk to industry parties that they may have to stop their load control activities because of delays processing applications.

As explained in other responses, we suggest that DESNZ and Ofgem retain some flexibility as to the end of the transitional period and potentially use the power of direction (subject to consultation) to determine when the right time for the load control licensing regime to go live is. This would help to mitigate the risk of licensing going live before all required parties have applied for and being granted a licence – either because of confusion as to whether they will require a licence or because of delays in Ofgem processing a large number of licence applications.

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

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

In response to question 10 and 11, we believe further consideration should be given to the use of tacit authorisation to support the introduction of the load control licensing regime. It would be appropriate to consider this after the scope of load control licensing is confirmed and there is greater clarity as to the nature of activities across industry caught by regulation. We have elsewhere welcomed Ofgem's use of tacit authorisation for heat network and TPI regulation.

To ease the regulatory burden associated with applying for a licence in a very short time period, we believe Ofgem should consider tacit authorisation for those already operating in the market.

At very least, we believe that organisations that have submitted licence applications to Ofgem during the transitional period should receive tacit authorisation to continue load control activities until Ofgem processes the application. This would mitigate against the risk that Ofgem receives significant volume of applications that it is unable to process by the end of the transitional period.

Additionally, we question if tacit authorisation could be used to support new entrants and innovation in the load control space. Our preference, as per our response to question 6 in the DESNZ consultation, is that a 'de-minimis exemption' is added to exempt from who control less than 1MW from the need to hold a licence. However, if such an exemption is not added, then tacit authorisation could be used to reduce barriers to entry for small new entrants. With tacit authorisation, such new entrants could then have a requirement to register in a certain period of time or before they pass 1MW.

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

We generally agree with the approach to compliance-related monitoring. Although it is important the approach is consistent with wider approach used for suppliers, since this is a new regulatory regime, it will be important for Ofgem to work cooperatively with load controllers in the early years of this regime and proactively seek to support them to understand the regulatory regime and share lessons learned on compliance across industry.

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.

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

In response to questions 13 and 14, we generally agree with the broad intent on market insights monitoring and agree it is important for Ofgem to do market monitoring.

However, we believe further discussions should be held with potential licensees to determine if it is feasible to monitor all these indicators considering the nuances of flexibility services and to ensure the RFIs on these do not impose a disproportionate burden. For example, we question if it will ever be possible to collect data on and monitor switching between FSPs because, unlike electricity supply, there will not necessarily be one FSP for each meter point. Instead, some customers may choose to have different FSPs for different devices. Additionally, we note that collecting information on products and services of FSPs and load controllers will be complicated as there is a very wide range of activities in scope of licensing – any RFIs to licensees on this subject would need to be proportionate.

There should also be discussions to determine whether the best way to monitor data on these subjects is by collecting data via RFIs from licensees. For example, could any of this data be monitored via data NESO or the Market Facilitator already has access to? We believe this subject would benefit from further workshops with industry to help ensure the regulatory burden is proportionate and data is collected in the most efficient manner.

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.

Unfortunately, considering our uncertainties as to the scope of our activities that will be caught by load control licensing, we are unable to comment on the cost of implementing the licensing regime and the licence requirements in it. We suggest a full impact assessment to support the decision on implementation of the licensing regime can only be done after there is greater clarity on the scope of licensing.

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 with this.

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.

We believe that Ofgem should consider whether load control licensees fall as part of a wider corporate group and manage engagement in a joined up manner with other licensees in that group where possible.

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 generally agree with this and believe it is important that Ofgem aims to be cooperative with licensees during the early years of this regulatory regime. However, we believe that it is important there is a level playing field and all licensees should be held to the same standard after the licence is turned on. We want to avoid any unfair situation where some licence holders are held to different standards than others.

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

We agree these initial focus areas for compliance engagement appear sensible at this time.

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 with proposal to align the approach on enforcement with Ofgem's existing enforcement approach. However, as stated in other question responses, Ofgem should aim to be cooperative and work with industry in the early years of the regulatory regime.

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

Yes we agree that single investigations into multiple licence holders is sensible, but it is important that such investigations do not result in any 'double jeopardy' whereby one entity is penalised twice.

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

From a high-level, the intent for different cyber regulatory requirements for those below and above 300MW is clear. However, we believe it is important to revisit the implementation of this once full details of the CAF requirements are known.

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

We are comfortable with the provision of some early information on cyber security plans as part of the licence application process, for example requiring the applicants to share detail on their future intentions and any existing processes they already have in place.

However, as per response to question 3 above and question 18 in the DESNZ consultation, we question how much detail applicants will be expected to provide on cyber security and resilience plans as part of the licence application process. The provision of detailed information would be in conflict with the wider proposal for compliance against CAF profiles to be achieved 18 months after the licence goes live. We also note that CAF frameworks are yet to be confirmed, so it will be challenging for applicants to provide any substantive detail on this in a licence application in early 2027.

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

We generally agree with this approach, but it will be important to ensure it is complementary to wider cyber security monitoring Ofgem does.

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

We believe whatever is done in this area needs to be consistent with any updates to the wider approach on cyber assurance and resilience audits. It is important that load controller cyber assurance and resilience framework complements wider practices.

We would generally support the principle that companies should have the option to contract with CRA equivalent audit bodies or do their own CRA equivalent audits. These options could help reduce costs associated with audits and help reduce regulatory burdens. If this is done internally within companies, we recognise this would have to be done by independent audit teams that are removed from all day-to-day business delivery – such an independent audit team could feasibly assure their own organisation's cyber security and resilience frameworks. These audit teams would need to be experienced and knowledgeable in fulfilling CAF and other framework audits, with appropriate and proportionate assessments to both recognised standards and clear regulatory scoping.

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

We broadly agree with the proposed inspection process, but reiterate that it is important that this complements the wider approach used by Ofgem to avoid confusion of different processes being used for load controllers versus others in scope of NIS Regulations.

Additionally, we note the inspections process (and wider CAF requirements) need to be proportionate to the risk posed by load controllers below 300MW. There is a broad risk that the regulatory burden placed on load controllers may be disproportionate that it could adversely impact existing or future load control services provided to customers.

Finally, we note the inspections process needs to be robust – Ofgem needs to have robust internal processes to identify inspection focus areas to ensure it focuses on identified risks in the system.

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

We agree with proposed approach to licence modifications, it is important this is complementary to any future changes made to supply licence though.

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

We agree with this proposed approach.

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

We agree with this proposed approach.

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.

We generally agree to the approach to revocation of licences and believe it is important for this to be consistent with Ofgem's wider approaches. Although we recognise that complete disregard of cyber requirements could mean there could be revocation of a licence, we believe the messaging here is slightly at conflict with the wider approach to cyber regulation. Cyber security and resilience should be a continual journey of improvement for organisations, and it is possibly unhelpful to say non-compliance could result in revocation of a licence when it is often not this black and white.

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

We agree with this proposed approach. It will be important for future load control licensees to have predictable costs that they need to pay Ofgem and we would welcome any transparency on individual costs to licensees.