
Draft load control license regulations and conditions – Ofgem Response

10th February 2026

Context and overview:

Flex Assure welcomes the opportunity to respond to the Ofgem consultation on load control licence regulations. As operators of the Flex Assure Scheme, we have over 5 years' experience in voluntary standards for flexibility providers in the I&C sector and now also active since December 2025 in the Domestic and Microbusiness sector. Our objective remains defining and promoting good industry practice through evidence-led voluntary codes that have proven effective pre-licensing, now providing real-time implementation insights as the statutory regime develops.

The scheme has independently audited compliance across vulnerability processes, sales standards, consumer protections, complaints resolution, and cyber security for the I&C side and the Domestic and Microbusiness side offers ADR through the Energy Ombudsman for customers of Flexibility Providers registered to the scheme. As such we position Flex Assure as the essential interim compliance bridge during the transition to licensing. 'Passporting' Flex Assure scheme members for FSP licence applications would reduce Ofgem's administrative burden while maintaining consumer protection through independently audited standards.

In this context, we urge caution about treating a 12-month transition period as sufficient by default. We strongly support the introduction of robust consumer protections, but if the transition is too short and compliance costs fall disproportionately on smaller innovators, this risks higher prices, slower innovation and fewer tailored offers for consumers in the longer term. Flex Assure offers a credible near-term solution to mitigate these risks by providing a structured on-ramp and interim should the transition period be extended: Our scheme directly maps to draft licence conditions, and we would be ready to provide scheme-level data to Ofgem on complaint patterns/implementation gaps, and an essential on-ramp for small FSPs during the statutory transition.

We also propose recognition of voluntary schemes like Flex Assure for I&C gaps, risk-based monitoring, stronger Annex D consumer override language ("must" vs "should"), and clarity on edge-case application backlogs will be managed to prevent consumer detriment. This combination of proportionate phasing, recognition of credible voluntary schemes and clear safeguards can protect consumers while preserving space for innovative providers to thrive.

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, Flex Assure agrees that these are the right principles to guide implementation. They anchor the framework in consumer protection and energy security to enable a robust market whilst requiring Ofgem to minimise unnecessary barriers to innovation and competition.

We also encourage Ofgem to make explicit how non-statutory schemes will contribute to these principles in practice, for example, how anonymised complaints, ADR data and audit findings from schemes like Flex Assure will be used to support proportionality, monitor consumer outcomes and refine guidance over time.

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.

Addressing I&C and small business gaps:

The proposed licence does not cover larger industrial and commercial load, even though system risks from I&C load control may be greater than domestic in the future. Smaller business customers also face complexity and potential detriment and have the potential to fall outside the licensing scope.

Here, voluntary assurance scheme such as Flex Assure could provide a route to consistent standards and independent checks where licensing does not apply. Clear guidance from Ofgem and DESNZ on the role of such schemes would support wider adoption and market confidence in relation to I&C flexibility services that fall outside the scope of the proposed licensing regime.

Small, innovative providers:

The licence is effectively “all-or-nothing”: having even a single in-scope domestic customer triggers the full licensing requirement. This risks creating a barrier to entry for small, innovative FSPs. Ofgem could explicitly recognise voluntary schemes as an on-ramp that helps firms build capability and evidence good practice before and alongside the licensing process.

Recognition and “passporting-type” benefits

Membership of robust independent schemes could, over time, support lighter-touch elements of the licensing journey. For example, allowing applicants to reference independent scheme applications and evidence, ADR arrangements and evidence of compliance with aligned standards in their applications (and monitoring). We would

recommend that structured recognition could reduce duplication while preserving Ofgem's decision-making.

Targeted support on cyber expectations

Whilst the load control license scope extends beyond Flex Assure requirements and the cybersecurity element is intended for Load Controllers, we have previously found that even our voluntary standards, particularly sales and training and cyber security, were difficult for some FSPs to meet. tailored statutory guidance and worked examples especially for smaller providers will be extremely helpful to ensure the CAF-related obligations are achievable.

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.

Broadly, yes. The proposed evidence requirements cover the right areas: operational capability, governance, financial resilience, consumer protection for FSPs, and cyber/code obligations for Load Controllers.

The proposed evidence required for regulation area "customer protection obligations", a single high-level statement of intent, is not enough on its own. It does not provide sufficient assurance that firms have embedded Annex D expectations into their day-to-day processes and controls. It would be helpful if Ofgem clarified that this statement should also signpost key underlying policies and processes, (for example customer communications, contract terms, exit processes) that sit behind the statement and whether this would ask applicants to reference these policies.

Other suggestions include:

- Improve clarity and signposting so that newer or smaller providers understand the standard being sought, for example by linking sections to relevant guidance (Annex D, CAF expectations) and giving examples of acceptable evidence.
- Explicitly allow applicants to reference existing independent schemes, certifications or audits where these demonstrably cover relevant areas, to reduce duplication while preserving Ofgem's ability to scrutinise.

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

A 12-month transition period should be treated as an absolute minimum rather than default. We are concerned that DESNZ and Ofgem have based this 12 month period on

optimistic assumptions about number of applications, complexity and administrative capacity. We encourage Ofgem to extend this deadline.

Legislation should also include extension mechanisms for cases where application volumes, complexity or provider readiness exceed expectations.

The DESNZ impact assessment itself suggests that this implementation and licensing itself will severely impact smaller innovators, which DESNZ themselves have said “would create costs to business that are assumed to be passed down to consumers”. A longer on-ramping period would give smaller innovators more time to build compliance capability, reducing the risk of consolidation and loss of innovation.

Whatever the transition length, it should be underpinned by clear milestones, regular communications and pragmatic flexibility where initial application volumes or complexity are higher than expected. It is currently unclear on how cases where providers submit complete applications within 12 months, but Ofgem processing exceeds this timeframe, (particularly given the indicative nine-month processing time). In such scenarios there is a risk that consumers could be left in a vulnerable position, either losing access to services they rely on or remaining with an unlicensed provider in regulatory limbo. We would welcome clarification and a clear plan for how such cases will be managed so that consumers are not exposed to detriment when the prohibition on unlicensed activity takes effect.

We are also concerned about the administrative burden that is put on Ofgem. Ofgem faces simultaneous implementation of load control licensing and TPI/broker regulation (with 2027 registration), creating unprecedented administrative pressure on application processing, monitoring and enforcement. Flex Assure's existing Domestic & Microbusiness scheme (developed from the HOMEflex innovation project) has been designed as an interim arrangement that maps to the draft licence conditions for FSP's. We therefore strongly encourage Ofgem to use independent schemes such as Flex Assure to support/reduce any administrative burden and duplication should an applicant have already undergone scrutiny to join the scheme and has shown initiative ahead of regulation requirements.

Should a “passporting” type approach be adopted, Flex Assure would also commit to share scheme-level insights with Ofgem, including recurring complaint themes, difficult edge-cases on suitability and exit, and where FSPs find consumer-protection guidance hardest to operationalise.

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 support streamlining the application process for certain licensed domestic suppliers, recognising the scrutiny they already undergo and avoiding duplication.

We would add that suppliers active in domestic flexibility who participate in voluntary schemes or follow codes aligned to the draft licence and where these standards demonstrably align with licence conditions in areas such as contracts, complaints and consumer advocacy, should be recognised as part of the evidence base.

This can reduce duplication for suppliers while giving Ofgem additional assurance that key consumer-protection practices have already been independently assessed, with ADR arrangements marked against clear standards.

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?

We agree that the risks, regulatory context and consumer-protection needs are materially different in domestic and microbusiness markets, so an application process for non-domestic customers would look very different. If it is Governments intent to not license suppliers of non-domestic customers, we recommend that they guide said suppliers to Independent Schemes like Flex Assure who can show customers FSPs operating under best practice.

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

Yes. A more comprehensive process for non-licensed suppliers is appropriate, given they have not been through supply-licence scrutiny

However, for some non-supplier FSPs, especially small or innovative ones, reaching full licence-level cyber and governance expectations in one step may be difficult, even where they can meet strong consumer-protection and complaints standards aligned with independent schemes like Flex Assure. A clear on-ramp, using voluntary schemes, guidance and supported pathways to help providers build capability before and during the application process, will be essential to avoid deterring good actors from entering or remaining in the market.

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.

Somewhat

To give effect to proportionality in practice, we suggest that:

- Ofgem explicitly considers participation in aligned independent schemes (such as Flex Assure) as a mitigating factor in assessing application risk, especially for smaller non-suppliers who demonstrate strong performance on sales/marketing, contracts and complaints but are still maturing on cyber.
- Ofgem and DESNZ remain mindful of the gap in formal coverage for I&C customers and smaller businesses outside the domestic licence, where Flex Assure already operates; this will help avoid a fragmented picture of assurance across segments

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

The applications should be processed with time, but Ofgem should make sure the process is clearly communicated and that they work closely with provider and if applicants are rejected, they be given clear guidance on how to resolve any issues with said application.

There is concern for customer detriment in point 4.26. We encourage Ofgem to extend the timescales for transition if needed. Please see answer to Question 4 for further reflections on timelines.

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

We agree tacit authorisation should not apply.

Given the consumer, cyber and system risks associated with load control, it would be inappropriate for a licence to be deemed granted automatically if Ofgem has not completed its assessment. Explicit authorisation is needed for public trust in domestic flexibility.

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

We do not see a case for planning to reconsider tacit authorisation at this stage.

If, in future, the risk profile of in-scope activities changes, Ofgem could consult on this again. However for now, the priority should be robust, explicit authorisation and on-ramping for smaller providers via guidance / non-statutory schemes.

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

Yes, we agree with the above, particularly with the focus on priority areas such as consumer outcomes, vulnerability, exit fees.

In the interim, Flex Assure can share anonymised, scheme-level insights on patterns including complaints and ADR themes and challenging areas of compliance to help Ofgem focus monitoring on genuinely problematic areas rather than rely solely on generic metrics.

We do not think any company should be granted derogations from monitoring obligations.

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.

Tracking customer numbers, types of services offered by providers and switching data between FSPs will be very valuable to see the evolution of flexibility within GB and essential to understanding whether the framework is enabling CLF whilst protecting consumers.

Additional indicators that could be included:

- Consumer satisfaction and complaint themes specific to load-control services, using ADR and independent scheme data where possible, to see whether outcome-based duties on fairness and suitability are working in practice
- The take-up and performance of voluntary assurance schemes across I&C segments if it is not included in the scope of licensing.

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

A Risk-based approach rather than blanket RFIs for all licensees seems like the right approach and RFIs are necessary for ensuring compliance, but proposed quarterly RFI's for smaller FSPs would be burdensome.

Ofgem might consider to make it proportional depending on number of consumers, and or rely on ADR data to show them whether they need to ask for RFI's. We also recommend testing draft RFIs with a cross-section of providers (including smaller innovators) before finalisation. We agree with an annual complaints report being necessary.

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.

Flex Assure is not itself a licence holder, so this is not applicable, but from previous stakeholder experience, indicative costs £7,000–£24,000 range per year seems plausible for medium-sized or above organisations, but would be rather challenging for smaller providers or start ups. These costs could severely impact smaller innovators, potentially reducing market activity and competition over time. They would also be passed through to consumers, raising prices in the long term. Proportionality is needed.

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 strongly support a risk-based and proportionate compliance approach.

It rightly concentrates resources on areas of greatest potential harm and allows Ofgem to use a spectrum of tools, from informal engagement to formal enforcement. This is particularly important in a nascent market where early, collaborative problem-solving can prevent issues from escalating.

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.

Yes. In addition to the factors already proposed, Ofgem might consider:

- Participation in robust independent assurance – Participation in schemes such as Flex Assure, and how firms respond to audit findings and required

improvements, is a useful indicator of genuine commitment to good practice beyond minimum compliance.

- Business model complexity – Propositions involving multiple parties (eg OEMs, platforms, suppliers, aggregators) or particularly sensitive loads may merit closer oversight.

These factors should complement, not replace, core indicators such as complaints, incidents and financial health

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 support this proposal.

Informal account management can help licensees understand expectations, address issues early and build a constructive compliance culture. Such relationships should be transparent in scope, avoid perceptions of preferential treatment, and sit alongside formal enforcement where that becomes necessary. Flex Assure would be happy to feed anonymised scheme-level insights into these relationships to help focus engagement on known areas of difficulty.

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

Yes we agree with the proposed priority areas.

With regards to the proposed priority area: treating customers fairly, we recommend strengthening Annex D's language on consumer control, particularly for comfort-critical services. The draft guidance states that consumers "should be able to override load control"; in our view this ought to be framed as "must be able to override" to avoid ambiguity and ensure all consumers retain meaningful control over their appliances.

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.

In principle yes. Given the novelty of the flexibility markets in GB we would emphasise the importance of clear messaging around the first few enforcement cases to set expectations and support consistent interpretation of outcomes-based duties.

However, flexibility services differ materially from electricity supply/heat. Whilst essential to Net-Zero they are not necessarily essential to the lives of individuals. Ofgem must clarify "priority matter" criteria specific to load control.

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

Yes, we agree with the proposed approach.

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

We do not offer a view on this question, as it sits outside Flex Assure's remit and operational scope

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

We do not offer a view on this question, as it sits outside Flex Assure's remit and operational scope

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

We do not offer a view on this question, as it sits outside Flex Assure's remit and operational scope

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

We do not offer a view on this question, as it sits outside Flex Assure's remit and operational scope

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 do not offer a view on this question, as it sits outside Flex Assure's remit and operational scope

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

Yes. Aligning the approach to licence modifications with established processes provides a transparent and familiar framework for adapting conditions as the market evolves.

Given the pace of innovation in ESAs and flexibility business models, it will be important that any modifications are used to address genuine new risks and opportunities, while providing stability for providers and for independent schemes updating their own standards in parallel.

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

Clear statutory guidance on what constitutes an acceptable transfer plan would help parties plan effectively.

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

Yes we agree

The ability to extend or restrict licences as business models and risk profiles change is important. If not already included, applications should include a declaration to notify Ofgem should their business models change.

The process should remain transparent and proportionate, with clear criteria and opportunities for licensees to engage, especially where restrictions could significantly impact consumers or system services.

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 with the proposed approach, although Flex Assure does not have a firm view on “revocations on the basis of failure to comply with the NIS regulations”. There should be clear escalation steps and opportunities for remediation before revocation is pursued, except in the most severe cases.

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

In designing the fee structure, it will be important to consider the cumulative burden on small, innovative FSPs who will also need to invest heavily to meet new cyber expectations. Recognition of robust independent assurance (for example, through lighter-touch monitoring or more predictable engagement) could help keep the overall cost of compliance proportionate without weakening protections.

We encourage Ofgem to consider graduated fees reflecting licensee size and the nature of activities and keep overall costs under review, especially for smaller or innovative providers.

On balance, yes, we think limited derogation provisions within the standard conditions could be helpful, primarily to mitigate risks of duplicative regulation and where equivalent protections exist elsewhere and can be demonstrated.

There may be scope for targeted derogations or lighter-touch approaches to some licence requirements, without weakening outcomes, for example:

- Avoiding duplication where an entity is already subject to equivalent or stronger obligations under another regime (for example certain cyber or governance requirements).
- Recognising robust independent assurance, where licensees can evidence that they meet particular consumer-protection obligations through participation in recognised schemes with independent audit and ADR (such as Flex Assure and Energy Ombudsman arrangements)

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