



Department for
Energy Security
& Net Zero

Smart Secure Electricity Systems Programme: Licensing regime

Consultation on proposals for a load control
licence.

Closing date: 11 June 2024



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Any enquiries regarding this publication should be sent to us at: SSEconsultation@energysecurity.gov.uk

General information

Why we are consulting

A smart and flexible electricity system is critical to decarbonise our economy, help manage electricity demand and reduce consumer bills. In July 2022, UK government consulted on a range of proposals that would impact appliances and organisations with a role in controlling electricity usage. The aim of the proposals was to create the foundation for a smart and secure electricity system.

We have now further developed these proposals and this consultation focuses on the design of a load control licence, with accompanying consultations on tariff data interoperability and regulation of Energy Smart Appliances as part of this publication bundle.

In this consultation we set out proposed options around the scope and design of a load control licence which build on responses and engagement following our previous consultation. Proposals include which activities will be licensed, which parties will be liable for compliance with each part of the licence, and the suggested approach to protections around cybersecurity, consumer protection, consumer switching, data privacy and financial and management controls. We additionally set out our proposed timelines for next steps and implementation.

We are now looking to collect stakeholder views on the proposals laid out within this consultation, including the suitability, costs and benefits of the proposed options and whether they achieve the policy intent for the licence as described throughout. These views will be used to further shape our proposals into more detailed draft conditions to be consulted on in early 2025.

Consultation details

Issued: 16 April 2024

Respond by: 11 June 2024 at 23:59 GMT.

Enquiries to:

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London
SW1A 2AW

Email: ssesconsultation@energysecurity.gov.uk

Consultation reference: Smart Secure Electricity Systems Programme: Licensing regime – Consultation on proposals for a load control licence.

Audiences:

This consultation will be of interest to companies in the energy sector currently offering or planning to offer services including load control of energy smart appliances. The consultation is also relevant for organisations with a wider interest in demand flexibility and consumer protection like: consumer advocacy groups, trade associations, wider electricity market participants (like transmission and distribution network owners), academic institutions, and think tanks.

Territorial extent: Great Britain only.

How to respond

Responses are encouraged to be provided via the CitizenSpace page:

<https://energygovuk.citizenspace.com/energy-security/smart-secure-electricity-system>

or via the response form that can be found on the GOV.UK consultation page:

<https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-implementation>

This response form can be sent via email to ssesconsultation@energysecurity.gov.uk or our postal address. When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

If you need a version of this document in a more accessible format, please email alt.formats@energysecurity.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.

Email response form to: ssesconsultation@energysecurity.gov.uk

or

Post response form to:

Smart Secure Electricity Systems Team, Department for Energy Security and Net Zero, 7th Floor, 3-8 Whitehall Place, London, SW1A 2AW

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004). We intend to share all responses to this consultation with Ofgem given their central role in delivering the load control licence.

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: bru@energysecurity.gov.uk.

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1. Introduction and summary of proposals

Background

Demand flexibility from remotely controlled energy smart appliances (ESAs) in people's homes and in small non-domestic settings has a pivotal and exciting role to play in a decarbonised electricity system. The Summary Document of this consultation package outlines government's future ambitions for Demand Side Response (DSR) from ESAs. Already, we are seeing innovative and compelling opportunities for consumers to offer flexibility through their ESAs in their homes and businesses – whether this be through aligning their Electric Vehicle (EV) charging with Time of use Tariffs (TOUTs) or participating in the Electricity System Operator's (ESO) Demand Flexibility Service.

It is government's view that the current demand flexibility market should represent only the beginnings of the growth of a service that will become commonplace across the country as a way to deliver a decarbonised electricity system at an efficient cost – and all whilst being a positive and often rewarding experience for consumers, fitting in seamlessly with their lives.

With government's ambition for the growth of demand flexibility through ESAs comes new considerations around how consumers are protected in their interaction with these novel services, and how those organisations carrying out load control could affect the electricity system if they don't put adequate technical and cyber security controls in place. Activities around remotely controlling ESAs are relatively unregulated at the moment apart from through wider general consumer protection regulations. Energy suppliers offering load control services as part of their wider consumer offerings are subject to certain legal requirements in relation to consumer protection and cyber security for their activities relating to supply of electricity, but not necessarily related to load control.

There are companies who are not energy suppliers also offering services related to load control. Recent developments could open new opportunities for innovators who want to find new value in this flexibility from consumers, like Ofgem's approval of the Balancing and Settlement Code P415 modification, which allows access to wholesale markets for flexibility dispatched by Virtual Lead Parties, and government's ongoing Review of Electricity Market Arrangements programme (REMA)¹.

In the Spring 2023 response to the previous SSES consultation, government confirmed that it intends to introduce new legal requirements on these load control services to protect consumers and the electricity system². We also confirmed our view that the best route to delivering these new requirements is through a new load control licence administered by

¹ Ofgem, 'Ofgem decision P415 'Facilitating Access to Wholesale Markets for Flexibility Dispatched by VLPs' (2023), <https://www.ofgem.gov.uk/publications/ofgem-decision-p415-facilitating-access-wholesale-markets-flexibility-dispatched-vlps#:~:text=Industry%20sector&text=BSC%20modification%20P415%20amends%20the,may%20have%20in%20the%20market> (viewed on 14 February 2024)

² GOV.UK, 'Delivering a smart and secure electricity system: Government response to the 2022 consultation on interoperability and cyber security of energy smart appliances and remote load control' (2023), <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control> (viewed on 7 March 2024)

Ofgem. We committed to developing proposals on requirements to include in the licence across different areas of consumer protection and cyber security.

In this consultation, we put forward for consideration proposals on what type of organisations will require a load control licence. We also put forward proposals on requirements around consumer protections, data privacy, consumer switching, and management and financial controls. Finally, we also put forward a framework and our design principles for cyber security and technical requirements in the licence.

Consumer impacts of DSR load control

It will be a novel experience for many consumers for their ESA to vary automatically when it is using electricity in line with changing price signals and requests. Some consumers will be familiar with TOUTs, like Economy 7, but services that involve their individual devices changing when they use electricity in response to the changing daily and hourly needs and prices of the energy system will undoubtedly be unfamiliar to many people. Though consumers will not necessarily have to understand the ins and outs of how demand flexibility benefits the energy system, government believes they should have the confidence that the appliance in their home or business is being controlled in a way that sufficiently benefits them, that they have sufficient control over their service, and that they can get an issue resolved if something were to go wrong with the service.

Government sees consumer confidence in load control as key to the large-scale uptake of DSR through ESAs. Government expects a competitive demand flexibility market will deliver compelling offerings that puts consumer experience and long-term value at their core. Encouraging levels of engagement in the ESO's Demand Flexibility Service, and high levels of smart charging, show that many consumers are willing to partake in a smart, flexible energy system and receive benefits from doing so³.

Government, industry bodies and Citizens Advice (the statutory consumer advocate for energy consumers in England, Wales and Northern Ireland) alike have identified potential risks to consumers associated with engaging in services involving the remote control of their ESAs for the purposes of DSR. Such risks include consumers entering into services that are unsuitable for their circumstances, consumers not having sufficient control over the device they use, and substandard complaints and redress processes in the event a DSR service doesn't meet consumer expectations⁴.

Already we are seeing industry stakeholders recognise the need for minimum standards when it comes to offering demand flexibility services to consumers. Government welcomes the development of voluntary codes and standards around demand flexibility services by industry stakeholders – for example the HOMEflex Code of Conduct developed by Flex Assure in partnership with Scottish and Southern Electricity Networks⁵.

To underpin a competitive, thriving demand flexibility market, we believe government has a role to build on the work defining good practices for dealing with consumers and put in place a

³ National Grid ESO, 'Demand Flexibility Service – Consumers have their say' (2023), <https://www.nationalgrideso.com/news/demand-flexibility-service-consumers-have-their-say> (viewed on 14 February 2024)

⁴ Citizens Advice, 'Demanding attention: Managing risks with demand-side response, to improve consumer experience tomorrow' (2021), <https://www.citizensadvice.org.uk/policy/publications/demanding-attention-managing-risks-with-demand-side-response-to-improve-consumer-experience-tomorrow/> (viewed on 14 February 2024)

⁵ Flex Assure, 'HOMEflex Code of Conduct – Version 1.0' (2023), <https://www.flexassure.org/homeflex> (viewed on 14 February 2024)

set of minimum legal requirements for those offering services around the control of ESAs for DSR. Responses to our previous consultation from businesses, consumer representatives and other stakeholders were generally supportive of the approach for creating a new licence too. By providing minimum protections to consumers around these services in a new licence, we will help to instil consumer confidence in the sector, which will improve uptake of demand flexibility services and consumer benefits received, and in turn deliver benefits to the electricity system and help support power sector decarbonisation by 2035.

Energy system impacts of load control

As well as opening up new opportunities to provide flexibility for the benefit of consumers and the electricity system, the ability that organisations will have to simultaneously control the load of many smart devices opens up new risks to the wider energy system. Malicious or improper control of these aggregated ESAs could lead to significant impacts on energy infrastructure, potentially affecting essential services that households and businesses across the economy rely on every day. Government is particularly aware of the risks to the energy system posed by the fast-growing market for flexibility of domestic-scale ESAs, but also the potential for negative impacts from the control of wider smart distributed devices, like public charge points, and systems that remotely control non-domestic loads for demand flexibility purposes.

Policy approach

Our policy principles

In the July 2022 SSES consultation, we emphasised that requirements in the licence should be proportionate, scalable, support market access, and enable innovation⁶. In considering a proportionate approach for the policies proposed in this consultation, we have sought to consider the following factors:

1. **Consumer protection and experience:** The licence approach must provide sufficient assurance that consumers will be protected when they enter into services around the remote load control of the devices they use, and they can switch service providers without undue barriers.
2. **Energy security:** The licence approach must provide sufficient assurance that load controllers are taking proportionate steps to mitigate cyber security risks in order to avoid impacts to grid stability.
3. **Enabling vibrant markets:** The licence approach, beyond addressing the key risks to energy security and consumers arising from activities around load control, must allow the demand flexibility sector to grow and innovate at the pace needed to deliver government's wider goals of decarbonising the electricity system and maintaining energy security.
4. **Enabling effective regulation** – As well as driving good outcomes for consumers, the electricity system and businesses, Ofgem must also be able to effectively monitor, assure, and if necessary, enforce against requirements in the licence in practice. For

⁶ 'Delivering a smart and secure electricity system: consultation on interoperability and cyber security of energy smart appliances and remote load control' (2022), page 59, <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control>

example, creating a licence approach that creates ambiguity on legal responsibilities could hamper Ofgem's regulatory effectiveness.

So long as the risks to consumers and the electricity system are proportionately addressed, government wants the load control licence to enable a level playing field for different business approaches and different business maturities currently observed in the market. Establishing a licence that allows diverse business models and takes into accounts the needs of smaller businesses in the sector will maximise competition amongst organisations and therefore encourage the development of compelling propositions that bring value to consumers and the wider electricity system.

Current understanding of the demand flexibility sector

To ensure our proposed approach enables a competitive, thriving demand flexibility market, we have considered the current state of the sector. Through stakeholder consultation feedback, informal engagement with stakeholders throughout 2023, and recent market intelligence, government understands the demand flexibility sector in Great Britain to be both diverse in its business approaches and fast-moving in terms of how these business models are growing and changing. There are many different activities that need to be carried out for a DSR load control service to work. For example, one market intelligence study has identified consumer acquisition and engagement, asset monitoring and control, aggregation, optimisation, interfacing with value streams, and billing and settlement all as necessary parts of a demand flexibility service offering⁷.

In many instances, we understand organisations are specialising in only a select number of activities in the value chain, meaning they partner with separate organisations to carry out other aspects of the whole DSR load control service ultimately offered to consumers⁸. To illustrate, in the market today we see some specialist organisations (who may also undertake other activities like optimisation) controlling ESAs' load in response to consumer preferences and external incentives from wholesale and balancing markets. However, these organisations have no direct visibility or formal contractual arrangement with the end user of the ESA who has signed up for the service. Instead, such organisations work through an intermediary specialist organisation who provides consumer-facing activities as part of the overall demand flexibility service offered to the consumer. The consumer-facing organisation may also feed through the consumers preferences to the party controlling the ESA's load.

At the same time there are those organisations who cover multiple activities in the flexibility value chain – they both contract with consumers and control the consumers' ESAs as part of their service offering. We observe that licensed energy suppliers active in the demand flexibility market can fall into both categories of 'specialists' and 'generalists' when it comes to load control services.

⁷ LCP Delta, 'The next frontier or a road to nowhere, Will residential flexibility finally take off?' (2023), https://research.lcpdelta.com/reportaction/FRS_resiflex_report/Toc?SearchTerms=the%20next%20frontier%20, accessible to LCP Delta subscribers (viewed on 22 February 2024)

⁸ 'The next frontier or a road to nowhere, Will residential flexibility finally take off?' (2023), https://research.lcpdelta.com/reportaction/FRS_resiflex_report/Toc?SearchTerms=the%20next%20frontier%20

Summary of policy proposals

This consultation is part of a package of consultations for the next steps in developing and delivering the Smart Secure Electricity Systems (SSES) Programme. The primary objective of the SSES Programme is to unlock the benefits of a smart and flexible electricity system for domestic and small non-domestic consumers, whilst protecting consumers and the grid. This consultation focuses on how to establish a licensing regime for organisations involved in load control and within the bundle of documents there are also consultations that consider proposals for the regulation of ESAs (such as heat pumps, batteries, and EV chargers) and proposals to deliver interoperability of tariffs.

Activities requiring a load control licence

We propose that an organisation performing one or more of the following activities will need to hold a load control licence:

1. **Contracting with domestic or small non-domestic consumers for services including load control of certain ESAs for the purposes of DSR** - in this consultation, organisations undertaking this activity are called 'DSR Service Providers' (DSRSPs).
2. **Load control of certain ESAs in domestic or small non-domestic settings for the purposes of DSR** - in this consultation, organisations undertaking this activity are called 'DSR Load Controllers'.
3. **Load control of certain ESAs with aggregated maximum potential load of 300MW or above** – in this consultation, organisations undertaking this activity are called 'Large Load Controllers'.

Licensing of DSRSPs will ensure key protections are in place for consumers engaging in demand flexibility services using their ESAs. In the demand flexibility supply chain, we believe organisations holding the contractual relationship with the consumer for a service represents the most appropriate point of accountability to ensure that requirements for protecting consumers are in place.

Licensing DSR Load Controllers and Large Load Controllers will ensure technical and cyber security measures are in place to protect the electricity system from malicious or improper control of aggregated ESAs. We think the most appropriate point of accountability in the demand flexibility supply chain for such requirements is on the organisations who are sending load control signals to individual ESAs. We propose to licence DSR Load Controllers controlling any level of load in domestic and small non-domestic settings to ensure the right measures proportionate to size of load controlled are in place as these organisations grow their portfolios. We also propose to licence wider load controlling organisations controlling aggregate loads of 300MW and above including where those loads extend beyond the domestic and small non-domestic sectors, given the critical national infrastructure risks associated with controlling any loads above this level.

We outline our detailed rationale for licensing DSRSPs, DSR Load Controllers and Large Load Controllers further in Chapter 2 and discuss proposed requirements further in Chapters 3-7 (with a high-level summary of proposed requirements outlined below).

Proposed requirements for load control licensees

We propose that there will be one licence covering these three proposed activities, given they are closely related and government understands that organisations will often be carrying out multiple activities together. The licence would be structured so an organisation would only be legally accountable to Ofgem for the requirements in the licence that are related to the activity or activities it practices. We propose there will be general conditions for all load control licensees and then particular conditions for each activity.

DSR Service Providers

We propose that all DSRSPs be specifically responsible for requirements to protect consumers, protect consumers' data, and to enable consumer switching between different DSR services.

Topic	Proposed position
General consumer protection condition	We propose that the load control licence includes a general principle of fairness to domestic and small non-domestic consumers. We will consider which, if any, of the more detailed obligations in the Standards of Conduct should apply to DSRSPs.
Recommending suitable services	We propose to follow the Electricity Supply Licence approach with consumer communication principles included in Standards of Conduct in a general consumer protection condition. Additionally, we propose a separate condition to the effect that DSRSPs may only recommend services that are suitable to the individual consumer's characteristics and preferences (similar to SLC 25.5).
Internal complaints procedures	We propose the licence require DSRSPs to have a complaints handling procedure and comply with requirements similar to the provisions in respect of complaints handling in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 ('the 2008 Regulations'). We will consider further how the licence conditions may need to differ from provisions of the 2008 Regulations to be appropriate to the circumstances of DSRSPs.
Dispute resolution	We propose that the licence should require DSRSPs to participate in an ADR service to provide dispute resolution to their consumers. We will further consider the option of allowing multiple ADR providers to provide redress services for DSRSPs. We invite views on whether consistency of consumer outcomes could be achieved through allowing multiple providers.
Independent consumer advocacy and guidance	Though we do not have a preferred approach at present, government is open to expanding the remit of statutory advice related to complaints to cover demand flexibility services, so long as

Topic	Proposed position
	<p>extending this service represents a proportionate cost for wider consumers.</p>
<p>Defining 'vulnerable situations'</p>	<p>We propose to follow the approach of the Electricity Supply Licence, which contains a broad and inclusive definition of vulnerable situations.</p>
<p>Identification and record-keeping of vulnerable situations</p>	<p>Government proposes to initially require DSRSPs to keep their own internal records of consumers in vulnerable situations, in line with UK-GDPR. We are open to views on requiring DSRSPs to offer specified priority services. We expect that service providers should be able to benefit from efforts across other utilities to bring together Priority Service Registers in future.</p>
<p>Inclusive and accessible design and communication</p>	<p>At this stage, we propose no new legal requirements around accessibility of DSR services in a licence. We believe that the Equality Act 2010 provides suitable protection for consumers with protected characteristics, however government is open to its role on how it can use its position to drive forward accessibility in the smart energy sector, both in terms of service interfaces and services on offer to consumers.</p>
<p>Consumer control over a load control DSR service</p>	<p>We propose that, in the instance that a DSRSP provides an interface which allows a consumer to change preferences for the load control of their ESA, the DSRSPs must at all times provide a consumer the option, through this interface, to request the cancellation of remote load control of their ESA, whether the load control is planned or in effect.</p> <p>We further propose that a DSRSP shall not impede any cancellation request or override made through other user interfaces provided with an ESA.</p>
<p>Exiting a DSR service</p>	<p>We propose a condition that requires DSRSPs to give consumers the option to exit a contract while allowing the service provider to proportionately recover associated costs from the consumer.</p> <p>We welcome views on how to define proportionate costs associated with a consumer's service exit, which could be by either taking precedent from the Electricity Supply Licence, or by relying on the 'fairness' definition to be developed as part of the load control licence consumer protection principle.</p>
<p>Technical interoperability of ESAs provided with a DSR service</p>	<p>We currently propose no interventions in the licence at this stage around the technical interoperability of ESAs provided with a DSR service, since we already plan to put in place relevant interoperability requirements applying to the sale of the ESA, which should apply to all 'bundling' approaches by load control licensees.</p>

Topic	Proposed position
Orderly switching	<p>We propose the licence should require that DSRSPs must not obstruct a consumer switching to another service provider provided all contractual obligations by the consumer (including proportionate costs) have been met.</p> <p>To support this outcome-level requirement, we are open to putting in place requirements in the licence enabling the orderly switching of ESAs between different DSRSPs and seek stakeholder views what these requirements could be.</p>

DSR Load Controllers

In this consultation, government proposes the use of the Cyber Assessment Framework (CAF) for DSR Load Controllers controlling loads below 300MW. We are minded to create a tailored CAF profile for DSR Load Controllers, alongside industry guidance. The appropriate CAF profile will be based on the minimum cyber security requirements identified for both DSR Load Controllers following the completion of government work with the National Cyber Security Council (NCSC) on this approach in 2024.

Large Load Controllers

In the July 2022 SSES consultation we confirmed our intention to assure the cyber security of Large Load Controllers using the CAF. We indicated our intention to make this a requirement through updating the Network and Information Systems (NIS) Regulations when Parliamentary time allows (noting that new primary legislation will be required before we can do this). In this consultation, we build on this position, and propose that, in the interim, we use the load control licence as the initial mechanism to ensure Large Load Controllers are assured against the CAF. We discuss the CAF and its application to Large Load Controllers in Chapter 2 and Chapter 3.

Introduction to the Cyber Assessment Framework (CAF)

The CAF is an outcome focused cyber security framework developed and maintained by the NCSC. It consists of 14 principles which collectively represent a robust level of cyber security and resilience for organisations that provide essential services set out in the NIS Regulations and other vital services.

The CAF enables flexibility and organisations of different sizes and profiles can meet outcomes in a way that is suitable and proportionate to their own operations. This methodology ensures that cyber risks are managed holistically, and that compliance is not a checkbox exercise. Most importantly, it promotes the management of risk within the organisation providing the service and avoids the unintended consequences of overly prescriptive requirements for a nascent and evolving market.

The CAF can be an effective way to manage cyber security with different profiles to ensure assurance approaches are proportionate to the risk profile of different essential services.

Requirements for all load control licensees

As well as requirements specific to DSRSPs and Load Controllers, this consultation also proposes general requirements for all load control licensees.

We discuss our data privacy policy approach for all load control licensees in Chapter 6. In this chapter we propose no further requirements around data privacy for load control licensees beyond their existing obligations under UK data protection law. However, we are open to further requirements in the future should there be evidence that it would benefit consumers and improve confidence in the demand flexibility sector. We have proposed that in the instance a load control licensee has undertaken an assessment of their data processing, they pro-actively share that assessment with Ofgem. We also discuss the approach of an industry-developed UK-GDPR Code of Conduct, which would be approved by the Information Commissioner's Office (ICO).

We discuss proposals for management and financial controls for load control licensees in Chapter 7. In this chapter we propose requirements for load control licensees to appoint fit and proper persons in senior positions, to comply with a principle of financial responsibility, and to have sufficient operational capability to comply with the requirements in the licence. We also discuss the insolvency of load control licensees, though propose no legal requirements on insolvency at this stage.

Implementation, timelines, and next steps

Government expects the load control licence to underpin a dynamic and growing demand flexibility sector through requirements that are proportionate to risks posed. Proposed timelines for the introduction of the load control licence are intended to reflect expectations on uptake of DSR services, timelines for wider market developments and the need to engage stakeholders. We expect to consult in further detail on enabling secondary legislation and the legal drafting of licence conditions in early 2025. By the end of 2025, subject to the will of Parliament, all necessary secondary legislation will be in effect to enable companies to apply for a licence and Ofgem to start the process of assessing applications and issuing licences. Timelines are discussed in greater detail in Chapter 8, alongside considerations on the following:

- **A transition period:** Government expects there to be a 'transition period' between when Ofgem can begin to issue licences and when conditions of the licence become fully effective.
- **Phasing:** We propose that all requirements for all load control licensees are introduced at the same time, but we are open to approaches on phasing the introduction of different measures.
- **Tiering:** We do not expect that requirements for DSRSPs in the licence will be tiered or scaled. We expect the same requirements around consumer protections will apply to all DSRSPs regardless of their characteristics, like size of customer base. We expect to tier requirements for Load Controllers in line with the amount of load they control – as discussed in Chapter 3.
- **Proportionality and Ofgem's regulatory approach:** In line with Ofgem's existing regulatory principles, proportionality will be considered in their regulatory approach for load control licensees of varying sizes. Government is considering whether those applying for a licence could evidence compliance with certain licence conditions by showing compliance with recognised external standards.

- **Interactions with the supply licence:** Government proposes that electricity suppliers already carrying out load control activities alongside their supply activities will need to apply for a load control licence.
- **Cost recovery:** Government proposes that costs associated with Ofgem's resource for regulating the load control licence would be recovered through a mix of fees for load control licensees themselves and Ofgem's general levy on other licensees.
- **Next steps:** This consultation will be open until 11 June 2024. Government will then consider consultation responses and engage with key stakeholders. We will deepen our understanding of the costs and benefits of the load control licence to inform an impact assessment. We will continue to progress work on developing detailed cyber security and technical requirements for Load Controllers and draft legislation and licence conditions for load control licensees. We expect to consult further in early 2025.

Understanding the costs to businesses of our proposals

In developing the load control licence, we want to draw on as much evidence from stakeholders as possible to better understand the potential costs and benefits of our measures. Throughout this consultation we pose questions about the costs of different proposals for businesses in the proposed scope of the licence. The data from stakeholder responses will be used for further policy development and economic appraisal. In general, throughout the consultation we ask relevant respondents for two sets of information for each licence area as set out below.

1. **Counterfactual costs:** The resources (in Full-Time-Equivalents) or the costs (in £) businesses currently use to deliver the proposed outcomes without a licence in place.
2. **Licence compliance costs:** The resources (in Full-Time-Equivalents) or the costs (in £) businesses would use to meet the proposed licence requirements with the licence in place.

We appreciate that cost data may be commercially sensitive. If data you are sharing is sensitive, please indicate this and explain why. Estimates from respondents will be anonymized and fed into a small sample. Economic appraisal will be based on cost averages based on this sample. When analysis will be published in the future, at no point we will reveal which organisations are part of the sample or the exact size of the sample.

2. Activities requiring a load control licence

Context

Previous consultation position

In the March 2023 government response⁹ to the July 2022 SSES consultation¹⁰, we confirmed our intention to develop a new licence for those involved in load control services. The 2022 SSES consultation proposed focusing requirements around activities relating to 1) entering into arrangements with domestic and small non-domestic consumers for the purposes of DSR (please see page 25 for the proposed definition of a small non-domestic consumer) and 2) remote load control of Energy Smart Appliances (ESAs) for the purposes of DSR.

Government seeks to achieve two main objectives through a new load control licence. First, it will set a baseline of requirements for licensees that will give protection to consumers who engage in certain DSR services, for example, by giving them the access to complaints and redress processes. Second, the licence will allow government and Ofgem to assure that companies who are likely to be controlling ESA load in aggregate are putting in place appropriate cyber security and technical measures to protect the electricity system.

Alongside protecting consumers and the electricity system, government wants the licence to enable innovative business propositions to continue to develop in the demand flexibility sector. Providing these base-level protections whilst enabling market development will help to grow and maintain overall confidence in the demand flexibility sector, encouraging more consumers to engage in these services, thus increasing demand flexibility's potential to deliver overall system benefits.

Energy Act 2023

The Energy Act 2023, and the amendments it makes to the Electricity Act 1989, allows government to require licences for activities around the sending of load control signals over a relevant electronic communications network to ESAs – known as 'load control' in the Energy Act. The Energy Act 2023 provides a wide overarching definition of 'energy smart appliance' and 'load control'.

We intend to require a load control licence only for a subset of activities related to the overarching definition of load control in the Energy Act 2023. Government is currently minded to only require a load control licence for activities around 'direct' load control, rather than to require a load control licence for sending wider communications to an ESA relevant to DSR, such as tariff, weather, or grid carbon intensity data. Government will also look to further

⁹ 'Delivering a smart and secure electricity system: Government response to the 2022 consultation on interoperability and cyber security of energy smart appliances and remote load control' (2023), <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control> (viewed on 8 March)

¹⁰ 'Delivering a smart and secure electricity system: consultation on interoperability and cyber security of energy smart appliances and remote load control' (2022), <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control>

specify what ESAs would be relevant to different aspects of the licence, and we provide initial proposals in this consultation.

Section 238 of the Energy Act 2023 – definitions

(2) “Energy smart appliance” means an appliance which is capable of adjusting the immediate or future flow of electricity into or out of itself or another appliance in response to a load control signal; and includes any software or other systems which enable or facilitate the adjustment to be made in response to the signal.

...

(4) “Load control signal” means a digital communication sent via a relevant electronic communications network to an energy smart appliance for the purpose of causing or otherwise facilitating such an adjustment.

(5) For the purposes of subsection (2) an adjustment to the flow of electricity into or out of an appliance is made in response to a load control signal whether it is made in response to—

(a) the sending of the signal, or

(b) the sending of the signal and one or more additional factors.

(6) The sending of a load control signal to an energy smart appliance is referred to as “load control”.

Proposed activities requiring a load control licence

We propose the following activities will require a load control licence:

- 1. Contracting with domestic or small non-domestic consumers for services including load control of certain ESAs for the purposes of DSR** – in this consultation, organisations undertaking this activity are called ‘DSR Service Providers’ (DSRSPs).
- 2. Load control of certain ESAs in domestic or small non-domestic settings for the purposes of DSR** - in this consultation, organisations undertaking this activity are called ‘DSR Load Controllers’.
- 3. Load control of certain ESAs with aggregated maximum potential load of 300MW or above** – in this consultation, organisations undertaking this activity are called ‘Large Load Controllers’.

We propose that there will be one licence covering these three proposed activities, given they are closely related and much of the time organisations will be carrying out multiple activities together. The licence would be structured so an organisation would only be required to comply with the conditions in the licence that are related to the activity or activities it practices. We propose there will be general conditions for all load control licensees and then particular conditions for each activity.

Organisations practicing an activity where compliance with licence conditions for that activity relies on third parties (including other licensees, like a DSRSP relying on a DSR Load Controller) are likely to seek contractual arrangements with such third parties to assure that their own licence obligations are appropriately met. Organisations who practice more than one of the above activities would be subject to licence conditions for each activity they practice. This would mean that organisations that carry out more than one of these activities would only have to hold one licence.

The activities we propose will require a load control licence are more specific than the wider Energy Act 2023 definition of load control. We propose that a licence would only be required for load control that is both 'remote' and 'direct'. By 'remote' we mean sending of load control signals over relevant communications networks outside the premises at which an ESA is situated. 'Direct' load control is load control that affects the load of an ESA without additional factors¹¹. Throughout this consultation, references to 'load control' should be interpreted as references to 'remote, direct load control'. Government proposes limiting the scope to only load control of certain ESAs, and for some of the activities only to load control of certain ESAs for the purposes of DSR – this proposed approach is discussed further below.

Rationale for licensing DSR Service Providers

We propose to licence activities of DSR Service Providers to provide important protections to domestic and small non-domestic consumers who have agreed to have their ESAs controlled for the purposes of DSR.

For many consumers, it will be novel for a device in their home or small non-domestic setting to be remotely controlled to vary its energy usage in response to price signals or requests in complex energy markets, rather than because of purely consumer-driven preferences. Government, industry bodies, and Citizens Advice have identified potential risks to consumers associated with engaging in services involving the remote control of their ESAs for the purposes of DSR. Such risks include consumers entering into services that are unsuitable for their circumstances, consumers not having sufficient control over the device they use, and substandard complaints and redress processes in the event a DSR service doesn't meet consumer expectations¹².

Government's position is that the risks to consumers associated with these new activities are significant enough to warrant placing new legal requirements on relevant organisations to mitigate potential harm to consumers. Detriment experienced by consumers from engaging in DSR could lead to a wider loss of confidence in demand flexibility, negatively impacting consumer uptake and potentially the wider system benefits from demand flexibility.

Should there be a failure to meet these consumer protection requirements, there must be a clear party for both the consumer and Ofgem to hold accountable. We believe that the most appropriate point where this accountability should lie is with the organisation who has contracted with the consumer for the delivery of the load control service. We therefore propose licensing the activity of contracting with a consumer for the delivery of load control services.

¹¹ 'Direct' load control corresponds with Energy Act 2023, section 238 paragraph 5(a), whereas 'indirect' load control corresponds to load control in paragraph 5(b). Energy Act 2023, available at: <https://www.legislation.gov.uk/ukpga/2023/52/contents/enacted> (viewed on 5 April 2024)

¹² 'Demanding attention: Managing risks with demand-side response, to improve consumer experience tomorrow' (2021), <https://www.citizensadvice.org.uk/policy/publications/demanding-attention-managing-risks-with-demand-side-response-to-improve-consumer-experience-tomorrow/>

The licence would set a minimum layer of legal protection for consumers relating to their contract with the DSRSP.

Regulating the activity of consumer contracting for load control services could allow relevant terms of the contract with the consumer to be limited within the bounds set by licence conditions, thus allowing for clear consumer redress and regulator enforcement if necessary. For example, for any obligations government places on allowing consumers to request cancellation of scheduled load control in licence conditions, this could also be clearly reflected in a consumers' contract with the service provider. Further, because the consumer contracting organisation will have mechanisms by which to engage consumers to sign up to its service, it will be more likely than other actors in the flexibility supply chain to have complementary business operations geared towards providing consumer-facing services.

Refining scope of the activity to certain ESAs

We propose to limit the requirement to hold a licence to undertake this activity only to contracting for load control services in respect of certain ESAs. For this activity, these ESAs are those that we understand will commonly be controlled for the purposes of DSR in domestic or small non-domestic settings.

Government believes defining these ESAs will provide clarity to stakeholders both in and out of the intended scope of the licenced activity. The appliances which we expect to be controlled remotely for the purposes of DSR, and thus propose to be within scope of this activity in the licence are:

- EV charge points in domestic and small non-domestic settings
- electric vehicles
- heating technologies that fall within scope of the smart mandate¹³
- battery energy storage systems (BESS).

Licensing load control services using Electric Vehicles (EVs)

Several EV charging demand flexibility services in the current market can operate through remotely communicating directly with a consumer's electric vehicle (rather than via controlling a charge point). Given this, we also propose licensing load control and contracting with consumers for load control which involves communication directly with an electric vehicle.

This will give parity for consumers who participate in demand flexibility through their EV with consumers who participate in demand flexibility through their EV charge points. It will also mean that the electricity system is still protected from risks associated with the direct control of EVs aggregated for demand flexibility. For clarity – government does currently intend that requirements proposed for certain ESAs (discussed in the accompanying consultation) will be extended to EVs.

In addition to licensing services where the above appliances are controlled directly, we also intend for the licence to capture services where the above ESAs are controlled by another ESA directly - the clearest example of this would be a 'home energy management system' (HEMS)

¹³ The SSES Energy Smart Appliances consultation proposes that technologies in scope of the smart mandate should include hydronic heat pumps, storage heaters, heat batteries and hot water generation/storage technologies.

that receives a remote signal as part of a DSR service and controls any of the above devices over a communications network.

In future, a load control licence could be required for services involving the control of any appliance that meets the Energy Act 2023 definition of 'ESA' for the purposes of DSR – such as white goods like fridges and washing machines. However, at this stage, we are not aware of remote load control DSR services in domestic and small non-domestic settings being offered through devices other than the ones specified above, and so to give clarity on the current scope of the licence – we have sought to define these ESAs. We are open to stakeholder views on whether to widen this activity to include all ESAs however.

Refining scope of the activity to DSR purposes

As well as refining scope of this activity to certain ESAs, we propose to limit the requirement for a licence to contracting with consumers for services where load control is being carried out 'for the purposes of DSR'.

Though we acknowledge load control of consumers' ESAs may be carried out for wider reasons beyond DSR (for example in response purely to consumer preferences), the primary motive that drives us to define this activity in a load control licence is to enable consumers to engage in DSR with confidence, which will unlock wider benefits for a decarbonised electricity system.

For the purposes of the proposed licence, we define DSR as changing, or the request to change, electricity consumption in response to price signals or instructions communicated to benefit any electricity market participant. This could include changing load of a consumer's ESA in response to requests from the ESO or Distribution Network Operators (DNOs) to support grid or network operations (like frequency response services) or other constraints. It could also include changing the future power consumption of a consumer's ESA in response to TOUTs or day-ahead half-hourly electricity prices; doing so could benefit suppliers, other relevant balancing parties and the overall balance position of the electricity system. Our working definition also includes addressing a balancing party's imbalance position, where the benefits of doing so are limited to the balancing party, rather than the wider electricity system. All these activities will likely benefit the consumer whose ESA is being controlled too, either financially or potentially through other non-financial rewards.

Rationale for licensing Load Controllers

Government proposes that activities of DSR Load Controllers and Large Load Controllers require a load control licence so they can be subject to cyber security and technical requirements that will mitigate risks to the electricity system.

Government proposes to use the Cyber Assessment Framework (CAF) to assure the cyber security of Load Controllers.

Government has discussed in previous consultations the risks to electricity transmission and distribution infrastructure associated with large changes in load of aggregated ESAs. A licence is an effective way to monitor and assure mitigations against these risks, allowing for the evolution of requirements for organisations as both risks and best practice evolve.

To assure that Load Controllers have in place adequate cyber security measures to protect the electricity system, government proposes that the NCSC's CAF would be the basis of assurance across all Load Controllers¹⁴. Further discussion of how the CAF will be applied to Load Controllers is included in Chapter 3. Government will work to design an appropriate CAF approach that is proportionate to the risks that different levels of load control pose to the electricity system.

Government has defined DSR Load Controllers and Large Load Controllers separately for the purposes of the licence given the critical national infrastructure risks that demand losses over 300MW could cause. For loads below 300MW, government expects impacts to electricity systems from malicious or improper control to be more localised and more likely to stem from ESAs being explicitly controlled for the purposes of DSR in domestic settings. However, we will continue to collect evidence to further understand the risks of different level of load control to network infrastructure. Furthermore, cyber attacks around DSR services for domestic and small non-domestic consumers below 300MW could have a significant impact on the overall reputation of demand flexibility.

Licensing activities of DSR Load Controllers

The remote load control of aggregated ESAs in domestic and small non-domestic settings is a fast-developing approach for DSR. Given the relative novelty of ESA load control as a service for the electricity system, there are less established requirements, standards and practices in place for load controllers to follow to ensure the cyber security of their systems and to ensure they do not undertake control of these ESAs in a way that could cause grid instability. Furthermore, given the small size of the load of each individual ESA, network operators also have less visibility of the aggregated load than they might do for other assets that provide flexibility services at scale currently, like larger generation assets.

Government has completed an assessment to understand the risks associated with the load control of aggregated ESAs used as part of service arrangements with domestic and small non-domestic consumers. Based on this analysis, government is confident that it is necessary to licence load control of these ESAs in domestic and small non-domestic settings. Bringing all DSR Load Controllers in scope of a licence, rather than just those over the 300MW threshold, will help to mitigate risks to distribution network operators that can occur with changes in load below 300MW. Furthermore, bringing all organisations into scope will mean that if such organisations come to controlling levels of load above 300MW that could affect critical national infrastructure (CNI), they should have already developed their cyber security maturity by going through assurance for controlling load below 300MW.

Refining scope of the activity to certain ESAs

As with licensing DSRSPs, our policy intent for DSR Load Controllers is to limit the requirement to hold a licence only to when certain ESAs in domestic and small non-domestic settings are being controlled.

We intend to limit the scope of this activity to the same ESAs as those relevant for DSRSPs:

- EV charge points in domestic and small non-domestic settings
- electric vehicles

¹⁴ National Cyber Security Centre, 'NCSC CAF guidance: Introduction to the Cyber Assessment Framework' (reviewed 2023), <https://www.ncsc.gov.uk/collection/caf/cyber-assessment-framework> (viewed on 22 February 2024)

- heating technologies that fall within scope of the smart mandate¹⁵
- battery energy storage systems (BESS).

Our rationale for limiting the scope of this activity to certain ESAs is the same as for DSRSPs above.

Refining scope of the activity to DSR purposes

As with licensing DSRSPs, our policy intent for DSR Load Controllers is to limit the requirement to hold a licence only to when ESAs in domestic and small non-domestic settings are being controlled ‘for the purposes of DSR’.

Our rationale for limiting the scope of this activity to DSR purposes is the same as for DSRSPs above.

Licensing activities of Large Load Controllers

In the previous SSES consultation government discussed how, without an appropriate level of cyber security, organisations remotely controlling larger electrical loads will become a point of vulnerability to the broader electricity system, with higher associated impacts on CNI. In the March 2023 SSES consultation response, government confirmed its intention to assure the cyber security of load controllers controlling larger aggregated loads using the CAF. Government has committed to updating the NIS Regulations 2018 to include Large Load Controllers as Operators of Essential Services (OES) as soon as Parliamentary time allows, as this will first require primary legislation (i.e. an Act of Parliament).

Amending the NIS Regulations so that Large Load Controllers could be designated or deemed to be designated an OES reflects the significant role they will play in a highly connected electricity system and takes into account the risk of unacceptable impacts on the electricity system and on CNI should these organisations be compromised. Until primary legislation is introduced, government is minded to implement legal requirements through a licence to assure the cyber security of Large Load Controllers using the CAF to the timeframe set out in the March 2023 response to the SSES consultation.

Limiting scope of the activity to certain ESAs

For licensing Large Load Controllers, we intend to define a wider range of ESAs in scope than for the other two activities in the load control licence involving DSR.

For load control affecting loads above 300MW, we intend to require a licence involving any ESAs that we believe are capable and likely to be controlled in aggregate. This includes, but is not limited to, those ESAs specified above that are likely to be controlled for the purposes of DSR in domestic and small non-domestic DSR settings.

For Large Load Controllers, as well as the ESAs specified above for activities related to domestic and small non-domestic DSR, we also intend to also require a licence for the control of public charge point loads and remotely controlling non-domestic loads above 300MW through an ESA. The ESAs we propose for which control above 300MW will require a licence are:

¹⁵ The SSES Energy Smart Appliances consultation proposes that technologies in scope of the smart mandate should include hydronic heat pumps, storage heaters, heat batteries and hot water generation/storage technologies.

- EV charge points in all domestic and non-domestic settings
- electric vehicles
- heating technologies that fall within scope of the smart mandate¹⁶
- battery energy storage systems (BESS)
- EV charge points in public settings¹⁷
- ESAs that control wider loads in non-domestic settings.

The risks to the electricity system from public charge point networks being compromised are similar to the risks posed by other smaller aggregated ESAs in domestic and small non-domestic settings being compromised. Government understands that public charge point operators have the ability to remotely control many charge points across their network simultaneously at short notice, therefore affecting large amounts of load. It is recognised that many public charge point operators do not have the functionality to initiate remote load control, with charging instead being manually operated by the consumer; however, some operators can opt to use remote load control for demand flexibility purposes. Government observes that some public charge point operators are already offering demand flexibility services to network operators¹⁸. The ability of operators to remotely control many public charge points simultaneously could also be in place for reasons beyond DSR, for example for billing arrangements with customers.

For energy management in non-domestic settings, there is already an active DSR market, for example turning down demand locally at energy-intensive industrial sites in response to ESO requests. We expect the distributed, automated and remote approach to load control in non-domestic settings will present new opportunities for the electricity system but also new risks. Where a Load Controller is using a remote communications network to communicate with ESAs in non-domestic settings, and these ESAs can control wider energy usage in those settings, then we propose the Load Controller will be within scope of a licence when they can control over 300MW. Assuring the cyber security of Large Load Controllers will ensure this market can grow in a secure and sustainable way and minimise risks to the electricity system.

Licensing Load Controllers who control ESAs in different settings

Government intends that in the instance that:

- a Load Controller controls under 300MW of load through domestic or small non-domestic ESAs
- that same Load Controller controls under 300MW of public charge point load or larger non-domestic load
- the cumulative value of the combined load they can control through all ESAs in all settings is over 300MW

then these Load Controllers will be considered Large Load Controllers and subject to the particular requirements in the licence relevant to that definition.

¹⁶ The SSES Energy Smart Appliances consultation proposes that technologies in scope of the smart mandate should include hydronic heat pumps, storage heaters, heat batteries and hot water generation/storage technologies.

¹⁷ A public charge point is described by government in the Public Charge Point Regulations 2023 as “a charge point which is intended for use primarily by members of the general public”. The Public Charge Point Regulations 2023, available at: <https://www.legislation.gov.uk/ukdsi/2023/9780348249873> (viewed on 22 February 2024)

¹⁸ Ubitricity Press Release, ‘ubitricity and UK Power Networks Sign Agreement to Add Flexibility to EV Charging by Shifting Demand Away from Peak Hours’ (2023), <https://ubitricity.com/en/press-releases/ubitricity-ukpn-sign-flexibility-contract/> (viewed on 24 February 2024)

Scope of the licence to non-domestic consumers

Background

In the March 2023 government response to the last SSES consultation, we stated that we expected to focus on ensuring domestic and ‘small non-domestic consumers’ engaged in services around DSR load control are protected. We also committed to more precisely defining relevant non-domestic consumers in further consultations. Since then, government has more specifically considered whether the scope of protections around DSR services in the load control licence should extend to microbusinesses, small non-domestic consumers, and larger non-domestic consumers, taking into account recent wider developments around the protection of non-domestic consumers for energy supply which are further discussed in this sub-section.

Regulation of companies serving consumers in the energy sector has historically focused on minimising harm to domestic consumers and microbusinesses. The Electricity Supply Licence currently offers a general principle of fairness to be applied to all dealings with domestic consumers through Supply Licence Condition 0 (SLC0) and with microbusinesses through SLC0A, but there is currently no coverage of this principle over dealings with small non-domestic consumers or larger non-domestic consumers. Ofgem’s review into the non-domestic market found that improvements could be made to ensure the market works better for non-domestic consumers of all sizes. In their December 2023 statutory consultation, Ofgem proposed to expand SLC0A to include all non-domestic customers to better reflect the fact that all customers, regardless of size or energy use, should expect fair treatment¹⁹. They also proposed to extend the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 to cover small non-domestic consumers, in alignment with government’s consultation on expanding access to the Energy Ombudsman²⁰.

Proposed approach and rationale

Scope of licensing load control above 300MW

We propose that should an organisation be able to control relevant ESAs with potential aggregated load of 300MW or over, they will require a licence for such load control, irrespective of the setting the ESAs they can control are installed in, and irrespective of the purpose for which they will be controlled.

This would mean load controllers who remotely control relevant ESAs used by non-domestic consumers of any size or operate public charging networks and control load over 300MW would require a licence to do so. The intention of licensing this activity is to put in place technical and cyber security requirements to protect the wider energy system. Requiring a licence for load control of relevant appliances above 300MW reflects the potential impacts on the wider energy system of a security incident for these large load controllers.

¹⁹ Ofgem, ‘Non-domestic market review: findings and statutory consultation’ (2023), <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-statutory-consultation>, consultation closed 31 January 2024 (viewed on 22 February 2024)

²⁰ GOV.UK, ‘Consultation outcome: New threshold for businesses accessing the Energy Ombudsman’ (2024), <https://www.gov.uk/government/consultations/new-threshold-for-businesses-accessing-the-energy-ombudsman>, consultation closed 31 January 2024 and response published 5 April 2024 (viewed on 8 April 2024)

Scope of DSR protections to small non-domestic consumers

We propose that a licence will be required for any contracting with a small non-domestic consumer for a service involving the load control of a relevant ESA for the purpose of DSR.

We propose that a licence will also be required for the load control of relevant ESAs in any small non-domestic setting for the purposes of DSR.

For the purposes of the licence, we propose a definition of small non-domestic consumers consistent with the definition for ‘small businesses’ in government’s recent consultation on expanding availability of redress services to small businesses and the related Ofgem consultations²¹. In alignment with the outcome of the ‘New threshold for businesses accessing the Energy Ombudsman’ consultation, government proposes a non-domestic customer is defined as a small non-domestic consumer if they:

- employ fewer than 50 employees (or their full time equivalent) **AND**
- have an annual turnover of at most £6.5 million or balance sheet total of £5.0 million **OR**
- have an annual consumption of electricity of not more than 200,000 kWh **OR**
- have an annual consumption of gas of not more than 500,000 kWh.

This definition is inclusive of but broader than microbusinesses.

Based on evidence from Ofgem’s recent non-domestic supply market review, government believes protections around load control would be beneficial for small non-domestic consumers, who can log similar numbers of complaints per 100,000 customers as microbusinesses²². Small non-domestic consumers are less likely to have the staff, resources or time to deal with problems with their load control service or deal with dispute resolution through courts (the costs to consumers of complaints and dispute resolution is discussed further in Chapter 4). Putting protections in place in the load control licence for small non-domestic consumers will mean they have consistent, consumer-focused experiences across energy supply and DSR services.

Government anticipates that protections for small non-domestic consumers in the licence would largely mirror those proposed in this consultation for domestic consumers. For example, we think it would be reasonable to require load control licensees dealing with small non-domestic consumers to comply with a principle of fairness, requirements around service recommendations, complaints processes, redress, and giving consumers control around energy use. However, government recognises that there may be differences in the protections necessary for domestic consumers and small non-domestic consumers around load control. Proposals in this consultation relating to consumers in vulnerable situations seem more suitable for domestic consumers than small non-domestic consumers. We therefore propose that, except for measures regarding consumers in vulnerable situations, the same consumer protection requirements proposed in this consultation for contracting with domestic consumers should also extend to small non-domestic consumers, though we are open to further

²¹ ‘Consultation outcome: New threshold for businesses accessing the Energy Ombudsman’ (2024), <https://www.gov.uk/government/consultations/new-threshold-for-businesses-accessing-the-energy-ombudsman>

²² ‘Non-domestic market review: findings and statutory consultation’ (2023), <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-statutory-consultation>

distinguishing relevant conditions for licensees' dealings with domestic consumers and small non-domestic consumers.

Scope of DSR protections to larger non-domestic consumers

At present, we propose limiting the scope of DSR protections in the licence to activities involving small non-domestic consumers but are open to views on whether in future the licence should cover activities relating to larger businesses and organisations too.

At this stage of the demand flexibility market, we do not think a load control licence dealing with DSR load control services for larger businesses and organisations is essential. Like in energy supply, larger non-domestic customers engaged in load control services will likely have more bespoke arrangements with energy service providers to meet their needs, so may not need the same type of protections as domestic and smaller non-domestic customers. Further, non-domestic demand flexibility, for example through large industrial consumers, is a more mature market with better-established practices than demand flexibility through smaller domestic-scale ESAs. The FlexAssure compliance scheme, which is already in use by some providers, provides assurance for large non-domestic consumers through minimum standards. We note that this remains a voluntary scheme²³.

We remain open to protections around DSR in the load control licence being extended to larger non-domestic consumers in the longer-term should stakeholder feedback suggest this would help support the development of the non-domestic demand flexibility market. In particular, more general conditions, such as the fairness principle, could apply. Government notes Ofgem's December 2023 statutory consultation proposes expanding SLC0A over contracting with businesses of all sizes. We will continue to monitor consistency between SLC0A and the scope of the load control licence.

Licensees' responsibility for compliance of their own activities

We believe the approach of defining multiple activities in the licence and each licensee being responsible for meeting the conditions for activities they carry out best achieves the outcomes of protecting consumers, protecting the electricity system, enabling a dynamic and growing demand flexibility market, and enabling effective regulation.

For government's preferred approach, DSRSPs, DSR Load Controllers and Large Load Controllers would all require a load control licence. Each load control licensee would need to comply with general requirements for all load control licensees, and then also particular requirements relevant to the activities they undertake. The relevant requirements for each activity will be defined in the licence. We propose the following general requirements for all licensees and the particular requirements for each licensee type:

General requirements for all load control licensees

- data privacy measures in Chapter 6 (no further legal requirements at this stage apart from sharing assessments of data processing with Ofgem)
- management and financial requirements outlined in Chapter 7

²³ Flex Assure, 'About Flex Assure', <https://www.flexassure.org/about-flex-assure> (viewed on 26 February 2024)

Particular requirements for DSR Service Providers

- consumer protection requirements in Chapter 4
- consumer switching requirements in Chapter 5

Particular requirements for DSR Load Controllers

- cyber security requirements through a tailored CAF profile, outlined in Chapter 3

Particular requirements for Large Load Controllers

- cyber security requirements through a tailored CAF profile, outlined in Chapter 3

Our preferred approach would mean an organisation only undertaking load control of ESAs (but not contracting with consumers) as part of a wider service would not be legally accountable to Ofgem for requirements around consumer protection - these would be the responsibility for the DSRSPs contracting with consumers as part of the services. Similarly, a DSRSP would not be subject to technical requirements under the CAF if they collaborated with a Load Controller for a service, rather than if they carried out load control themselves. This approach of splitting responsibilities allows companies to specialise in particular aspects of the demand flexibility value chain should they wish and only be subject to requirements directly relevant to their activity, whilst still putting in place the necessary requirements to protect consumers and the electricity system.

For this preferred option, there may be instances where a licensed DSRSP collaborates with either a DSR Load Controller or a Large Load Controller to deliver an overall DSR service and both parties rely on each other to meet their respective obligations under their particular conditions in the load control licence. For example, to meet the requirements around the consumer complaints process proposed in Chapter 4, a DSRSP may need detailed information on the consumer's service from their collaborating Load Controller.

In this scenario, should there be non-compliance with the consumer complaints requirements, we believe that Ofgem should have the ability to take compliance action against a DSRSP for non-compliance, since the condition relates to a service which that organisation has contracted with a consumer to deliver, even if they were relying on the Load Controller. In this example, government would expect the DSRSP and Load Controller to put in place any arrangements amongst themselves to assure that each party can meet their respective requirements.

Alternative approaches to defining licensable activities

Across all potential options, Government is minded to require a load control licence for Large Load Controllers, given the CNI risks associated with load control above 300MW.

However, for those organisations undertaking activities related to DSR (DSRSPs and DSR Load Controllers controlling under 300MW), Government is open to other options on how to divide liability between these parties.

By our assessment, our current preferred approach of having separate requirements under the load control licence depending on what activity an organisation carries out strikes the best balance of assuring that consumers engaging in demand flexibility are protected, assuring that the electricity system is protected from DSR load control below 300MW, and supporting

diverse business models. However, we are open to other approaches to defining licensable activities, subject to stakeholder feedback. We discuss potential alternative approaches below.

Alternative 1 – Require a licence only for a DSRSP and Large Load Controller, no licence required for a DSR Load Controller

Government has considered an approach for the licence where cyber security requirements around technical load control below 300MW are the legal responsibility of a licensed DSRSP and a DSR Load Controller would not require a licence to carry out load control.

In this option, if a DSRSP were to collaborate with a third-party DSR Load Controller, it would be the DSRSP's responsibility to make sure the DSR Load Controller was complying with the relevant requirements under CAF around the cyber security of load control. Ofgem would have legal powers to monitor and investigate. If necessary, they could then enforce against the DSRSP as a licensed entity, but not against the DSR Load Controller, since the DSR Load Controller would not hold a licence. If a DSRSP were to collaborate with a Large Load Controller, the Large Load Controller would still be licensed and subject to the same relevant requirements in the licence around cyber security proposed above.

We see benefits to this option around regulatory simplicity by creating only one clear point of accountability for all DSR services below 300MW. However, it could restrict Ofgem's regulatory approach by only being able to hold one party accountable, even if problems around grid security were caused by a collaborating DSR Load Controller. Further, this approach could in fact encourage DSRSPs to collaborate more with Large Load Controllers than DSR Load Controllers below 300MW, since by collaborating with Large Load Controllers they would be subject to fewer legal requirements around an activity they do not directly undertake.

Alternative 2 – Require a licence for DSRSP, Large Load Controller and DSR Load Controller, all licensees subject to same conditions

In this option, all the parties defined above would require a load control licence. However, in contrast to government's preferred option, all load control licensees would be equally legally accountable for all requirements in the licence. As an example, this would mean if a DSR Load Controller failed to comply with conditions around cyber security of load control as part of a DSR service, then Ofgem could take regulatory action not only against that DSR Load Controller, but also the DSRSP it collaborates with to offer the load control service.

This alternative approach gives the most assurance that consumers and the electricity system are protected and gives Ofgem the most flexibility in their regulatory approach. However, at this stage of market development, Government believes it would be disproportionate and may not be feasible in practice to impose these requirements on all load control licensees. It could require significant work between collaborating licensees to determine liability should there be a failure to comply by one party, and it could discourage organisations from specialising in one activity.

Discounted option – licensing only DSR Load Controllers and Large Load Controllers, no licence required for DSRSPs

Government has considered and discounted an approach for the licence that would only require a licence for DSR Load Controllers and Large Load Controllers but not for DSRSPs. Government is minded to discount this option since we do not think it would provide sufficient assurance that consumers engaging in demand flexibility would be protected. In this option assurance that these conditions were being met would fall on specialist Load Controllers, who

might not have experience in consumer facing services, nor assurance of other organisations' consumer-facing processes.

Other options

Government is open to other approaches to the licence that may be suggested by stakeholders in response to this consultation, so long as they meet our policy outcomes of protecting consumers and the electricity system, enabling dynamic and growing markets, and enabling effective regulation.

Questions

Licensable activities

1. **Do you agree that activities of DSRSPs should require a load control licence? Please explain your answer.**
2. **Do you agree that activities of DSR Load Controllers should require a load control licence? Please explain your answer.**
3. **Do you agree that activities of Large Load Controllers should require a load control licence? Please explain your answer.**
4. **Do you think there should be any further activities that should require a load control licence? Please explain your answer, and expand on any further activities where relevant.**

Refining scope to certain ESAs and DSR

5. **Do you agree with government's proposal to limit the scope of the licence to certain ESAs for each activity proposed in this chapter? Please explain your answer.**

Activities	ESAs in proposed scope
<p>DSR Service Providers - contracting with domestic or small non-domestic consumers for the provision of remote direct load control of certain ESAs for the purposes of DSR.</p> <p>DSR Load Controllers - Remote direct load control of certain ESAs for the purposes of DSR in premises used by domestic or small non-domestic consumers.</p>	<ul style="list-style-type: none"> • EV charge points in domestic and small non-domestic settings • electric vehicles • heating technologies that fall within scope of the smart mandate • battery energy storage systems (BESS).
<p>Large Load Controllers - Remote direct load control of certain ESAs with</p>	<ul style="list-style-type: none"> • EV charge points in all domestic and non-domestic settings

<p>aggregated maximum potential load of 300MW or above.</p>	<ul style="list-style-type: none">• electric vehicles• heating technologies that fall within scope of the smart mandate• battery energy storage systems (BESS)• EV charge points in public settings• ESAs that control wider loads in non-domestic settings.
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6. Do you agree with government’s proposal to limit the scope of some of the activities in the licence (consumer contracting for load control and load control below 300MW) to load control for the purposes of DSR? Please explain your answer.

Scope to non-domestic consumers

7. Do you agree with Government’s proposal for protections around DSR in this licence to cover small non-domestic consumers? Please explain your answer.

8. Do you think the scope of DSR protections in the load control licence should extend to larger non-domestic consumers too? Please explain your answer.

Responsibilities for different types of licensees

9. Do you agree with Government’s proposal for licensees to only be responsible for compliance with particular conditions in the licence related to the activity or activities they carry out? Please explain your answer.

3. Assuring the cyber security of Load Controllers

Context

In the previous chapter, we proposed requiring a licence for activities carried out by ‘Large Load Controllers’ and ‘DSR Load Controllers’ for the purposes of protecting the electricity system against cyber risks. As cyber threats to the UK continue to evolve, the potential for cyber-attacks against the energy sector to pose a risk to national security and the economy is increased, possibly impacting on the essential energy services that households and businesses rely on every day. It is the government’s view that without an appropriate level of cyber security controls, service providers such as Load Controllers and their supply chains, could become points of vulnerability to the broader electricity system, as well as creating risks to the consumers who rely on their services.

Previous consultation position – Large Load Controllers

In our March 2023 response²⁴ to the SSES consultation of July 2022²⁵, government confirmed our intention to bring Large Load Controllers into the scope of the Network and Information Systems (NIS) Regulations and to use a 300MW threshold for Load Controllers to be considered Operators of Essential Services (OES) under the NIS Regulations. Amending the NIS Regulations so that Large Load Controllers would be deemed to be or designated as OES would reflect the significant role they will play in a highly connected electricity system and would take into account their potential for causing unacceptable impacts on the electricity system and to Critical National Infrastructure (CNI).

Our consultation response confirmed our intention to use the Cyber Assessment Framework (CAF)²⁶, a tool developed by the National Cyber Security Centre (NCSC), as an outcomes-focused framework to assess the cyber resilience of Large Load Controllers²⁷. Chapter 2 refers to our intention to update the NIS Regulations once Parliamentary time allows and until then to implement legal requirements to manage the cyber security of Large Load Controllers initially through the load control licence.

²⁴ ‘Delivering a smart and secure electricity system: Government response to the 2022 consultation on interoperability and cyber security of energy smart appliances and remote load control’ (2023), <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control>

²⁵ ‘Delivering a smart and secure electricity system: consultation on interoperability and cyber security of energy smart appliances and remote load control’ (2022), <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control>

²⁶ National Cyber Security Centre, ‘NCSC CAF guidance: Introduction to the Cyber Assessment Framework’ (reviewed 2023), <https://www.ncsc.gov.uk/collection/caf/cyber-assessment-framework> (viewed on 22 February 2024)

²⁷ Background information on the Cyber Assessment Framework is provided on page 14 in the ‘Introduction and summary of proposals’ chapter.

Previous consultation position – DSR Load Controllers

Government has recognised there will be Load Controllers controlling less than 300MW, and so not in eventual scope of the NIS Regulations, and that it may still be desirable to introduce minimum cyber security requirements for such Load Controllers controlling domestic-scale ESAs. For instance, in the event of a cyber-attack, DSR organisations may be compromised, which could lead to consumer detriment, undermine confidence, and affect distribution and transmission infrastructure. A significant majority of respondents to the original SSES consultation agreed that licensing requirements would be appropriate for managing cyber security risks for organisations controlling load below the 300MW threshold. Government committed, in its consultation response, to consider what such cyber hygiene may be required, including via licensing proposals. In 2023 government undertook a cyber threat and risk assessment of the cyber security risks associated with DSR through domestic-scale ESAs. Based on the outputs of these assessments, we further confirmed a need for regulatory intervention to manage cyber security risks.

This chapter puts forward a proposal on cyber security principles to apply to the security assurance of organisations within scope. This chapter also puts forward a minded to proposal to use CAF for DSR Load Controllers controlling loads of less than 300MW, as well as Large Load Controllers controlling loads of more than 300MW (as has been previously established).

We are minded to create two tailored CAF profiles for load control: a profile for DSR Load Controllers controlling loads of less than 300MW and a separate profile for Large Load Controllers controlling loads of more than 300MW, alongside industry guidance relevant to each profile. This is to ensure that the security requirements on organisations within scope are proportionate to the risks they pose to the energy system and are not overly demanding or onerous.

Principles for developing our cyber security assurance framework

Whilst the CAF promotes flexibility for organisations, it is the government's view that there are further principles applicable to CAF profiles that all licensed parties in scope could benefit from following, such as the regular monitoring and visibility of risk, and those relating to compliance and governance. We therefore propose applying the following principles to the security assurance framework:

- risk-based - the assurance scheme should mitigate the key risks posed by load controlling organisations
- flexible - the assurance scheme should be capable of covering both <300MW and >300MW organisations
- tiered/proportionate - the scheme should be tiered to ensure that requirements are proportionate to the risk
- transition between tiers - the scheme should enable organisations to transition between tiered options as their portfolio evolves over time without material changes in assurance approach

Cyber security risks will need to be regularly monitored to maintain a constant and consistent assessment. Depending on nature and level of risk identified, load controllers will need to demonstrate compliance through independent auditing.

10. Do you agree with the four assurance principles? If not, please explain your answer.

Proposals

1. Using CAF for DSR Load Controllers

We propose the use of CAF for DSR Load Controllers controlling loads of less than 300MW, as well as Large Load Controllers controlling loads of more than 300MW (as has been previously established).

Since the previous consultation, government has engaged with NCSC on the best approach for assessing cyber security of DSR Load Controllers as well as Large Load Controllers and has identified the CAF as the most suitable assessment framework for DSR Load Controllers controlling loads below 300MW.

Aligning the assurance framework for DSR Load Controllers and Large Load Controllers offers scope for tailored DSR-specific profiles for different sizes of Load Controllers, should tailored profiles be required. It also provides consistency in the cyber security assessment approach across the domestic DSR system, allowing all licensed Load Controllers to more easily follow a profile that is appropriate to the risks posed whilst enabling transition across tiers as the total amount of load they control may change.

2. Creating CAF Profiles for DSR Load Controllers and Large Load Controllers

We are minded to create two tailored CAF profiles for load control: a profile for DSR Load Controllers controlling loads of less than 300MW and a separate profile for Large Load Controllers controlling loads of more than 300MW, alongside industry guidance relevant to each profile.

Introduction to the CAF profiles

After identifying system boundaries, an organisation will decide which target Government CAF profile the system will be assessed against.

A **Baseline** profile is the minimum baseline standard for all organisations. All organisations will need to be assessed against the Baseline profile.

An **Enhanced** profile is for systems and organisations that face a higher threat. High threat drivers could include, for example, organisations hosting Government CNI or those with wider dispersed geography. The Enhanced profile does not represent a higher classification tier or change the threat profile of official information. Above all it does not assume that an official system can or should be entirely impenetrable to an advanced state adversary.

A **Foundation** profile is currently under development by NCSC. It is intended to set target levels of cyber resilience for smaller, less critical (non-CNI) organisations. It will be much easier for smaller organisations to understand and implement compared to requirements set out in higher-level cyber resilience profiles.

The CAF profiles can be tailored to a specific sector.

We are minded to propose the creation of two tailored CAF profiles: one profile for DSR Load Controllers and a separate profile for Large Load Controllers. This is to ensure that the security requirements on organisations within scope are proportionate to the risks they pose to the energy system, clear and prescriptive, and not unnecessarily demanding or onerous on organisations to adopt. The CAF profiles will be based on the minimum cyber security requirements identified for both DSR Load Controllers and Large Load Controllers following the completion of government work with NCSC on this approach. As part of this work, we will explore whether there is a need for further tiering for DSR Load Controllers below 300MW.

We are confident that an Enhanced CAF profile will likely be appropriate for organisations above 300MW as they are more likely to face a higher threat with more serious consequences. Following the completion of government work with NCSC later this year we will be able to determine the appropriate CAF profile approach for DSR Load Controllers operating load below 300MW, although we are confident at this stage that an Enhanced CAF profile is unlikely to be required for DSR Load Controllers given the relatively smaller amount of load controlled.

We expect these profiles will be supported by industry guidance to aid industry in understanding the controls that will be required to achieve the necessary outcome. Government has determined that two profiles should be sufficient for now to address cyber security requirements for all organisations partaking in DSR as it ensures the following:

- foundational security requirements are in place for new market entrants or organisations operating at lower load control thresholds
- recognition that the DSR market is still in its nascent stages and that the barrier to entry for new market entrants is proportionate to the risk they pose
- greater cyber security assurance for those organisations controlling larger amounts of load that could pose a risk to the wider energy system

11. Do you agree that two tailored CAF profiles, one for DSR Load Controllers and a separate profile for Large Load Controllers, is the right approach to organisational assurance for assessing licensed Load Controllers? Please explain your answer.

Next Steps

Government is progressing work to create the right technical, security and assurance framework which will enable us to determine the most suitable security requirements and controls and determine tiers or thresholds where any such controls apply. Officials will work with NCSC to determine appropriate profiles for Load Controllers. We will engage industry via our programme Security Working Group on initial content of the CAF profiles to inform our thinking before Summer 2024. Government will consult on completed draft profiles by early 2025.

4. Consumer protection

Context

One of the main reasons for introducing a load control licence is to put in place requirements to protect domestic and small non-domestic consumers who engage with DSR services. Government aims to encourage consumer confidence so that the positive impact of DSR on the transformation of the energy system can be maximised whilst also enabling market development and innovation.

Government expects that when a consumer signs up for a DSR service the consumer will be entering a contract with a DSRSP. This contract creates obligations on both parties and (for domestic consumers) is governed by existing consumer protection law, including the Consumer Protection from Unfair Trading Regulations 2008²⁸, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013²⁹ and the Consumer Rights Act 2015³⁰, although this legislation provides only general protections such as cancellation rights and protections from hidden charges. Current legislation defines a consumer as ‘an individual acting for purposes that are wholly or mainly outside that individual’s business’. This means that contracting with small non-domestic consumers would not be covered by the existing general consumer law listed above. To create more specific protections and to cover small non-domestic consumers, government intends to use a load control licence to drive positive consumer outcomes.

In determining the appropriateness of intervening in the market via licence conditions, we have considered the costs and benefits of doing so across consumers, organisations and sector growth. We intend for the licence to hold organisations to minimum standards across the market. However, government acknowledges that it will be important to ensure that requirements do not create an unreasonably high floor or create barriers to innovation.

Government expects competition to play the main role in driving forward standards in demand flexibility and will facilitate this by, for example, enabling the interoperability of smart appliances. In addition, whilst important, DSR is not a critical service for consumers, so we will balance the objective of giving consumers confidence to engage in a novel service with the impact of any intervention on a growing market. The proposals in this chapter have been guided by these principles.

This chapter puts forward proposals for conditions in the load control licence for DSRSPs around protecting consumers. We propose these consumer protection conditions only apply to DSRSPs and not to Load Controllers who are not also DSRSPs, given the direct relationship that DSRSPs will have with consumers.

As well as exploring proposals relating to general consumer protection principles, we also propose more specific conditions relating to load control. This includes complaints and redress processes for load control services, how licensees should consider consumers in vulnerable

²⁸ The Consumer Protection from Unfair Trading Regulations 2008, available at: <https://www.legislation.gov.uk/uksi/2008/1277/contents> (viewed on 22 February 2024)

²⁹ The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, available at: <https://www.legislation.gov.uk/uksi/2013/3134/contents> (viewed on 22 February 2024)

³⁰ Consumer Rights Act 2015, available at: <https://www.legislation.gov.uk/ukpga/2015/15/contents> (viewed on 24 February 2024)

situations and how organisations should provide consumers control over their service preferences and energy use.

Proportionality

A full list of topics and proposed positions explored throughout this chapter is detailed in the table at the end of this chapter. Government believes that the proposed package of consumer protection measures provides appropriate protection for consumers against the most significant risks that could arise from load control services without placing excessive burden on DSRSPs. We intend for our approach to increase consumer confidence to engage with DSR services and avoid consumer detriment as these services become more popular, all whilst facilitating organisations to develop and innovate. However, we are open to views on whether the proposals in this chapter achieve the correct balance in protecting consumers without placing excessive costs or burden on licensees to comply.

Government acknowledges that load control licensees of different sizes will have different capabilities in implementing licence requirements. We think that maintaining a minimum standard of consumer protection across the whole sector, no matter the size of different providers, is important to overall consumer confidence. 'Tiering' of consumer protection conditions could result in worse outcomes for consumers whose DSRSPs are subject to fewer requirements. Inequity in the market could deter consumers from contracting with newer or smaller providers and create confusion where a consumer switches DSRSP.

We have not proposed any tiering of consumer protection conditions based on the size of the licensed organisation in this consultation. However, we are open to views on the cumulative impact of the proposals on new entrants to the market, including whether they appear achievable for smaller actors.

Questions on the full package of proposed consumer protection measures are listed at the end of this chapter.

General consumer protection condition

Background

General requirements laying out the principles by which organisations should treat and engage with consumers are a valuable inclusion in a licence as they signal minimum expectations of fair treatment and a customer-centric culture. They are designed to be applicable across many different situations, which can reduce the number of more specific requirements. General conditions are utilised across energy as well as in other sectors. For example, the Financial Conduct Authority has recently implemented its Consumer Duty for all relevant organisations that it regulates.

Government has considered comparable approaches undertaken by other organisations in the electricity sector. Condition 0 in the Electricity Supply Licence (SLC0) is a general consumer protection principle with the objective of ensuring each domestic consumer is treated fairly³¹.

³¹ Ofgem, 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 0 in the Electricity Supply Licence (SLC0), Treating Domestic Customers Fairly, please refer to the Electricity Supply Licence, page 9 (viewed on 5 March 2024)

SLC0A is the equivalent condition for microbusiness consumers³². As noted in Chapter 2, extending this protection to small businesses has been recommended by Ofgem and was recently subject to consultation³³. There is a similar condition on fairness in the Distribution Licence³⁴.

SLC0 and 0A are core elements of the Electricity Supply Licence, which signal Ofgem's expectations for licensees' interactions with consumers. The Electricity Supply Licence conditions include Standards of Conduct which provide additional specific protections such as requirements on customer service arrangements and communication of information³⁵. Ofgem has successfully acted against licensees where it has determined that suppliers are not adhering to these expectations, including where suppliers have failed to promptly resolve mistakes in the information they have shared with consumers.

Government has considered whether to place a similar general principle upon DSRSPs, just as the approach from the Electricity Supply Licence was brought across to the Distribution Licence with the condition modified to fit that sector.

Proposed approach and rationale

We propose that DSRSPs be required through the load control licence to meet a general principle of fairness to domestic and small non-domestic consumers. We will consider which of the more detailed obligations in the Standards of Conduct should apply to DSRSPs.

The Electricity Supply Licence condition specifically refers to its application to vulnerable situations. We believe that a base level of protection is important for all consumers, including those in vulnerable situations. We have further explored definitions of 'vulnerable situations' for the purpose of load control and have put forward recommendations for specific protections for those consumers later in this chapter.

An overarching principle-based condition guiding DSRSPs' conduct in dealings with consumers would provide flexibility in developing approaches, as long as they deliver fair consumer outcomes. It would give Ofgem the capability to enforce against organisations when poor customer service has been delivered, including where other, more specific, conditions have not been breached, as it has done through the equivalent Electricity Supply Licence condition.

In the fast-growing demand flexibility sector, this approach would give organisations space to develop and innovate while ensuring that fairness is at the heart of their operations. Embedding fairness in every aspect of a service provider's interaction with consumers would clearly indicate government and Ofgem's expectations on organisational culture.

³² 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition OA in the Electricity Supply Licence (SLC0A), Treating Microbusiness Customers Fairly, please refer to the Electricity Supply Licence, page 12)

³³ 'Non-domestic market review: findings and statutory consultation' (2023), <https://www.ofgem.gov.uk/publications/non-domestic-market-review-findings-and-statutory-consultation>

³⁴ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 10AA in the Electricity Distribution Licence (SLC10AA), Treating Domestic Customers Fairly, please refer to the Electricity Distribution Licence, page)

³⁵ Ofgem, 'Licence guide: Standards of Conduct' (2019), <https://www.ofgem.gov.uk/publications/licence-guide-standards-conduct> (viewed on 24 February 2024)

Adopting an approach that is consistent with the Electricity Supply Licence may also underpin the expectation that fairness to consumers is as important in load control as it is in supply. Although DSR is not a critical service for the end consumer, requiring equivalent treatment and outcomes as mandated in electricity supply could instil greater consumer confidence when using a service that impacts their energy consumption.

SLC0

The objective of this condition is for the licensee and any Representative to ensure that each Domestic Customer, including each Domestic Customer in a Vulnerable Situation, is treated Fairly (“the Customer Objective”).

SLC0A

The objective of this condition is for the licensee to ensure that each Micro Business Consumer is treated Fairly (“the Customer Objective”).

For the purposes of these conditions, “Fair” treatment is to be understood as follows:

The licensee or any Representative would not be regarded as treating a [Domestic or Micro Business] Customer Fairly if their actions or omissions give rise to a likelihood of detriment to the [Domestic or Micro Business] Customer, unless the detriment would be reasonable in all the relevant circumstances.

DSRSPs could also benefit from a level playing field of clear expectations on them across all consumer interactions. For DSRSPs that are also suppliers, consistency in approach across DSR and supply will facilitate the delivery of the same positive outcomes to demand flexibility consumers. In the following section on recommending suitable services, we propose that consumer communication principles based on those in the Electricity Supply Licence are included in the Standards of Conduct. Given the differences in the two services, government accepts that outside of the proposed inclusion of the consumer communication principles, Standards of Conduct may differ. We are accordingly open to views on what to include in the Standards of Conduct in the load control licence.

Alternatively, government could develop a new general consumer protection condition to underpin a new load control licence. Other sectors have developed approaches of this kind, including the Financial Conduct Authority (FCA) Consumer Duty³⁶, which places new rules on various financial products and services. Like SLC0 and 0A, the FCA’s Consumer Duty is outcomes-based and comprised of a Consumer Principle and cross-cutting rules. In contrast, instead of an overarching emphasis on fairness, the Consumer Principle is focused on delivering ‘good outcomes’. It defines four outcomes that represent key areas of the firm-consumer relationship. There is an opportunity to consider whether a different approach within the load control licence, such as a ‘consumer duty’, could provide improved benefit to consumers or greater clarity to organisations. Government has also considered an approach which omits general principles and focuses solely on individual areas of risk via particular conditions. Regardless of the inclusion of a general consumer protection principle, government anticipates the need for some more targeted conditions; but, by not including a general principle, the licence may need to contain greater detail on how service providers should

³⁶ Financial Conduct Authority, ‘PS22/9: A new Consumer Duty’ (2022), <https://www.fca.org.uk/publications/policy-statements/ps22-9-new-consumer-duty> (viewed on 24 February 2024)

interact with consumers in particular dealings. Greater levels of detail may not be suited to the current stage of the market.

12. Do you agree with requiring DSRSPs through the load control licence to meet a general condition to treat consumers fairly? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.

Recommending suitable services

Background

There is a risk that domestic and small non-domestic consumers are sold a DSR service that is not appropriate to their needs, either due to the DSRSP misrepresenting or not clearly explaining the service. Harm could also be caused by improper explanation of a DSR service to the extent that a consumer misunderstands its effects.

In the electricity supply sector, the Standards of Conduct in SLC0 and 0A require suppliers to provide information to consumers that is complete, accurate, communicated plainly and intelligibly, and relates to products or services that are appropriate to the consumer. The supply licence also includes an additional specific condition (SLC 25.5) that the supplier must only recommend tariffs that are appropriate to the domestic consumer's characteristics and preferences³⁷.

Proposed approach and rationale

We propose to follow the Electricity Supply Licence approach with consumer communication principles included in Standards of Conduct in a general consumer protection condition.

Additionally, we propose a separate condition to the effect that DSR Service Providers may only recommend services that are suitable to the individual consumer's characteristics and preferences (similar to SLC 25.5).

The Standards of Conduct could define appropriate conduct when providing information to consumers, including the kinds of information that may be used by the consumer to decide whether to sign up for a DSR service. This would apply across all communications including service recommendations. A specific condition could then offer further focused protection which emphasises the importance of suitable service recommendations.

This approach offers organisations the flexibility to determine the most effective manner of presenting information on their services while placing on them the responsibility to do so in a clear and comprehensive way. Government believes this is an important condition for ensuring that consumers understand the services they are signing up to. Government also believes this condition is particularly relevant when it comes to demand flexibility services since many consumers will not have entered similar service arrangements involving the remote control of the devices they use.

³⁷ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>, for Condition 25.5 in the Electricity Supply Licence (SLC25.5), Informed choices – Tariff comparability and marketing, please refer to the Electricity Supply Licence, page 222

Where the proposal refers to recommending a service, we propose to use the supply licence definition of 'Recommend', which is centred around communicating services to consumers in a way that implies such services are suitable to their situations³⁸. This would entail a need for information about services provided to consumers to be clear and transparent, giving reference to the suitability of the service for different working and energy usage patterns. If the DSRSP wished to make a direct recommendation to a consumer, we expect that they would first ascertain that consumer's situation to determine if the recommendation was appropriate. This condition sets a minimum expectation for service providers while being a reasonable requirement at an early stage and aiming to benefit all consumers. Government believes this will not impede the development of innovative service offerings and will encourage DSRSPs to consider how their service offerings are suitable to those with different characteristics or preferences.

Government has considered other approaches centred around specified outputs that standardise practices in delivering information. For example, we could require provision of simple English information sheets including key information that could be specified in the condition. Such approaches could confine service providers in how they communicate about services to the detriment of organisations and consumers. Alternatively, we could take no action in the licence at this time. Government expects that existing consumer protection law will provide some coverage regarding informed choices and the suitability of services. For example, the Consumer Protection from Unfair Trading Regulations 2008³⁹ requires that organisations refund consumers if they have misled them about products (which include services), and the mandatory 14-day cooling off period required by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013⁴⁰ for distance or off-premises contracts will offer consumers time to cancel their contract if they determine it is not right for them shortly after signing up. However, due to the complexity of DSR services, government feels additional targeted protection is appropriate.

- 13. Do you agree with the proposal to use Standards of Conduct within a general consumer protection principle of fairness to impose requirements for communications about products and services? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.**
- 14. Do you agree with the proposal to include a licence condition that instructs DSRSPs to only recommend services that are appropriate to the individual consumer's characteristics and preferences? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.**
- 15. Would guidance for DSRSPs regarding appropriate services for different types of consumers be beneficial?**

³⁸ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>, for Condition 25.7 in the Electricity Supply Licence (SLC25.7), Definitions for condition, 'Recommend', please refer to the Electricity Supply Licence, page 222

³⁹ The Consumer Protection from Unfair Trading Regulations 2008, available at: <https://www.legislation.gov.uk/ukSI/2008/1277/contents> (viewed on 8 April 2024)

⁴⁰ The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, available at: <https://www.legislation.gov.uk/ukSI/2013/3134/contents> (viewed on 8 April 2024)

Complaints procedures for consumer-facing demand flexibility services

Background

Domestic and small non-domestic consumers may occasionally experience problems with their load control service and would expect for their problem to be addressed by a DSRSP through making a complaint, as is the case with many products and services across the economy. At present, there are no specific requirements that those offering load control services have a complaints process unless the DSRSP is already a licensed energy supplier. In energy supply a complaints procedure is set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (referred to as ‘the 2008 Regulations’ in this section)⁴¹. As outlined in the ‘Scope to non-domestic consumers’ section of Chapter 2, the 2008 Regulations currently only apply to contracting with domestic and microbusiness supply consumers, but current government proposals seek to extend these protections over small non-domestic consumers too.

The 2008 Regulations, which can be reviewed in full by accessing the link in the associated footnote, set key requirements of the consumer complaints process. Requirements include, amongst others, having a complaints handling procedure for handling all consumer complaints from receipt through to resolution, specified information about consumer complaints that must be recorded by regulated providers upon receipt of such complaints and to allocate sufficient resources to enable them to deal with consumer complaints. Examples of requirements on the complaints handling procedure include using plain and intelligible English, allowing complaints to be made verbally or in writing and describing the steps that will be taken to resolve the complaint, among others.

Industry stakeholders have already demonstrated a desire for minimum standards around consumer complaints in flexibility services through their engagement in the development of the HOMEflex code of conduct and subsequent consultation⁴².

Proposed approach and rationale

We propose the licence require DSRSPs to have a complaints handling procedure and comply with requirements similar to the provisions in respect of complaints handling in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (‘the 2008 Regulations’).

We will consider further how licence conditions may need to differ from the provisions of the 2008 Regulations to be appropriate to the circumstances of DSRSPs.

A lack of requirements for DSRSPs to have a formal complaints procedure could mean consumers could have to either escalate their issues further through other means at their own cost and inconvenience or accept that there is no recourse for their problem. Government acknowledges that prudent DSRSPs will already have complaints procedures in place. However, the risks to consumers and wider confidence in the sector arising from an

⁴¹ The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, available at: <https://www.legislation.gov.uk/uksi/2008/1898/contents> (viewed on 24 February 2024)

⁴² Flex Assure, ‘HOMEflex Code of Conduct – Version 1.0’ (2023), <https://www.flexassure.org/homeflex> (viewed on 14 February 2024). Information regarding the HOMEflex Code of Conduct and the HOMEflex Open Consultation are both available through the hyperlink

organisation in the future failing to provide one could be significant. We believe that, to grow and maintain consumer confidence in the demand flexibility sector, it is important to introduce minimum requirements around complaints processes. Consumers have expressed a preference for a simple, standardised complaints process and a desire for DSRSPs to adopt best practice on complaints and redress from other sectors⁴³.

For industry, government believes these minimum standards, even when consumers reach the point of raising a complaint, will help to maintain consumer confidence in the sector overall. Poor outcomes from raising complaints could drive consumers to leave the market.

Relevant requirements in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008

The 2008 Regulations prescribe standards for the handling of consumer complaints by energy suppliers and certain other providers. To inform stakeholders responses on our proposed policy approach for DSRSPs, below we summarise the relevant regulations, and provide our views on how similar requirements to each regulation could be appropriate for DSRSPs.

Regulation 3 requires providers to have a complaints handling procedure, for them to comply with the procedure and in paragraph (3) outlines key requirements this procedure must meet, which include it being in plain and intelligible language, setting out the steps to be taken to resolve complaints, providing for internal review where a consumer is dissatisfied with the handling of their complaint, requiring the provider to inform consumers of the sources of independent help available, and allowing consumers to make a complaint either over orally (e.g. over the phone) or in writing. We propose that DSRSPs similarly be required to have and follow a procedure. Our initial view is that all of the requirements would be appropriate for DSR services subject to slight modifications to reflect pending policy decisions on the redress scheme and independent help for DSR consumers (3(f) and 3(g), require a provider to direct consumers to a redress scheme and independent help respectively).

Regulation 4 specifies the information about consumer complaints that must be recorded by regulated providers upon receipt of such complaints. We think DSRSPs should also record the information outlined in this regulation but will consider further whether any adjustments need to be made considering DSRSPs' particular activities.

Regulation 5 specifies the information that must be recorded by regulated providers about consumer complaints that have not been resolved by the regulated provider by the end of the next working day. Government thinks this regulation would be suitable for DSRSPs, but we will consider further whether this condition should be modified to fit their particular situations.

Regulation 6 requires regulated providers to inform consumers in writing of the consumer's right to refer the consumer complaint to the redress scheme. Though the redress scheme for DSRSPs would depend on feedback on our policy approach proposed in this consultation and further policy development, we think similar

⁴³ Centre for Sustainable Energy, 'HOMEflex Qualitative Research' (2023), <https://www.cse.org.uk/resource/homeflex-qualitative-research-report/> (viewed on 24 February 2024)

requirements for DSRSPs to refer consumers to the relevant ADR provider would be sensible.

Regulation 7 sets out how regulated providers should deal with consumer complaints and requires that they allocate sufficient resources to enable them to do so. We think such requirements would be appropriate for DSRSPs to follow too.

Regulation 8 requires regulated providers to establish arrangements to address certain vulnerable consumer complaints. Though we don't think DSRSPs will be directly dealing with issues to do with disconnection, we do still think there could be instances where they may need to give further consideration to a consumer's vulnerable situation when handling their complaint. We will consider further whether and how a similar requirement could apply to DSRSPs alongside our wider measures for consumers in vulnerable situations.

Regulation 9 requires regulated providers to establish arrangements for the referral of consumer complaints or, where applicable, complainants from a consumer advocacy body to the regulated provider. We have no minded-to position at present on the applicability of this particular regulation pending further policy development on the role of a consumer advocacy body more widely for DSR services.

Regulation 10 requires regulated providers to make information concerning their complaints handling procedures available to consumers in particular ways and at particular times – for example putting the procedure in a clear and prominent location on their website. We think similar requirements would be appropriate for DSRSPs, but will consider further any changes that may need to be made depending on their particular activities.

Regulation 11 requires regulated providers who hold supply licences to prepare and publish an annual report concerning their complaints handling procedure, mentioning the existence of the Regulations and setting out certain details concerning the consumer complaints they have received from domestic consumers during the relevant period. At present we think requirements for such reports could be disproportionate to apply to DSRSPs, but will keep the matters in this regulation under consideration.

Though we are currently minded to base licence conditions requiring a complaints process on the 2008 Regulations, we welcome views on any adaptations needed to address the particular circumstances of DSRSPs and their customers, so long as consumers are sufficiently protected.

Government believes many of the requirements within the 2008 Regulations set a good basis for complaints procedures for consumers in the energy sector, and closely following them best addresses the needs of consumers while placing proportionate requirements on DSRSPs. For consumers, this approach will create a simple experience that aligns with their expectations or prior experience of energy-related complaints.

For suppliers operating as DSRSPs, minimal action could be required to comply, so long as they extend their complaints processes to also process DSR service-related complaints. There is a risk that these requirements disproportionately benefit suppliers by placing additional burden on non-supplier DSRSPs. However, government believes that clear, tested, requirements could act as helpful guidance for newer DSRSPs in structuring their process. We believe there is still room for service providers to innovate regarding how they handle

consumer complaints whilst meeting licence conditions requiring them to follow particular processes.

Government have also considered the option of creating a complaints process bespoke to DSR services. We determined that, in practice, this would likely involve similar requirements to those in the 2008 Regulations so that an acceptable standard could be achieved and enforced across the market. Another option considered was for the licence to require that DSRSPs have an internal complaints process without specifying details on the shape of this. This could deliver increased flexibility for service providers to determine their own processes and may carry a lower burden than a procedure similar to the existing 2008 Regulations. However, while competition may incentivise good complaints processes over time, this approach could result in some organisations having insufficient processes that lack guidelines on important aspects. Consumers may suffer poor outcomes before complaints procedures are adapted to define important processes. The impact of taking no action was also explored, however the risk of consumers receiving no recourse if their provider had no obligation to implement a complaints process meant government discounted considering this option further.

16. Do you agree with the proposal to use the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 as a basis for requirements for complaints processes for DSRSPs? Please explain your answer.

17. Are there any requirements within the 2008 Regulations that you consider to be inappropriate to apply to DSRSPs?

Dispute resolution

Background

Domestic and small non-domestic consumers of DSR services who report complaints may feel that the internal complaints process did not resolve a situation to their satisfaction. Resolving issues through the courts can be costly and time-consuming which may be a disincentive for consumers. In various consumer-facing services across the economy, Alternative Dispute Resolution (ADR) mechanisms offer an opportunity to resolve issues outside of the court process, including by referring an unresolved complaint to an independent organisation, which can assist with or direct on the outcome of a dispute. An ombudsman is a particular type of ADR service that can make a decision on how to resolve a dispute, and should its decision be agreed to by both the organisation and the consumer involved then it is usually legally binding.

Gas and electricity suppliers, electricity distributors and gas transporters are required to partake in a redress scheme designated by Ofgem, in respect of certain kinds of consumer complaint, by The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008⁴⁴ and the Consumers, Estate Agents and Redress Act 2007.⁴⁵ The redress scheme for these regulated organisations is currently delivered by the Energy Ombudsman. The requirements to participate in the redress scheme currently only apply to arrangements with domestic and microbusiness supply consumers but, as outlined in the 'Scope to non-domestic consumers'

⁴⁴ The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008, available at: <https://www.legislation.gov.uk/uksi/2008/2268/contents/made> (viewed on 24 February 2024)

⁴⁵ Consumers, Estate Agents and Redress Act 2007, available at: <https://www.legislation.gov.uk/ukpga/2007/17/contents> (viewed on 24 February 2024)

section of Chapter 2, current government proposals seek to extend these protections over to small businesses too.

Proposed approach and rationale

We propose that the licence should require DSR Service Providers to participate in an ADR service to provide dispute resolution to their consumers.

We believe participation in a common ADR process naturally follows from expectation that consumers engaged in load control have their issues with their service appropriately addressed. This will help avoid direct consumer detriment associated with issues that might have otherwise been unresolved, and will grow and maintain consumer confidence in the demand flexibility sector.

Government acknowledges some cost to DSRSPs associated with participation in an ADR scheme, such as a possible annual membership fee and a fee for each case referred. We believe the cost to DSRSPs would be proportionate, especially as the per-case fee should incentivise effective complaint resolution, which is further facilitated by our proposal to require a clear complaints process.

We believe having a single common ADR provider across all DSRSPs could be simpler and lead to a consistency of outcomes for consumers across the demand flexibility market, rather than have potentially varied outcomes depending on the ADR provider. The point where consumers access ADR follows the perception or suffering of detriment, so it is important that minimal complication is added to the consumer's situation. A high-quality service is valuable not only to consumers but also to DSRSPs as resolution of the situation is likely to result in a fairer outcome, whoever it favours. Were we to pursue the option of a single ADR provider for DSRSPs, the process for appointing the scheme would be subject to further consideration by government and Ofgem.

At this stage, we note there are different forms of ADR service, like mediation, ombudsman, and arbitration, and we welcome views on what form a common ADR service could take for DSRSPs, noting that for other parts of the energy sector, an ombudsman is used.

We will further consider the option of allowing multiple ADR providers to provide redress services for DSRSPs. We invite views on whether similar consistency of consumer outcomes could be achieved through allowing multiple providers.

Government remains minded towards the single provider approach for its benefits in simplicity and clarity as explained above. Government has also considered the option of allowing DSRSPs to sign up to any ADR provider (assuming they are approved through existing, wider regulations) rather than require a single provider across the sector.⁴⁶ Government acknowledges that, subject to Parliamentary passage, the Digital Markets, Competition and Consumers Bill would make the current voluntary regime for approval of ADR providers across the economy into a mandatory accreditation requirement.⁴⁷ Therefore, requiring DSRSPs to sign up with an ADR provider accredited under the Bill's proposed new regime could achieve our intended policy outcome of a consistent consumer experience on the basis that all such

⁴⁶ The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, available at: <https://www.legislation.gov.uk/uksi/2015/542/contents> (viewed on 24 February 2024)

⁴⁷ Digital Markets, Competition and Consumers Bill, available at: <https://bills.parliament.uk/bills/3453/publications> (viewed on 24 February 2024)

providers would be required to meet defined minimum criteria. This would give DSRSPs greater control over the cost of the service and may drive competition in the redress market, which could further reduce costs. Government notes that Ofgem recently made it a requirement, from December 2022, that suppliers only work with third party intermediaries who are part of qualifying ADR schemes, of which there are multiple.⁴⁸

Government could also choose to take no action to require dispute resolution at this stage, leaving the provision of ADR to be on a voluntary basis. This means some consumers will have no access at all to dispute resolution if their DSRSP has not signed up for it, which could generate confusion and unequal outcomes.

18. Do you agree with the proposal that the licence should require DSRSPs to participate in an ADR scheme? Please explain your answer.

19. Do you think there should be a single common ADR scheme across DSRSPs? Please explain your answer.

Independent consumer advocacy and guidance

Background

Domestic energy consumers currently have access to independent advice and help for problems around energy through Citizens Advice and Citizens Advice Scotland. Other organisations, like Energy Saving Trust also provide advice on energy-related matters for consumers. Citizens Advice and Citizens Advice Scotland have a statutory role under section 12 of the Consumers, Estate Agents and Redress Act 2007 (CEARA 2007) to provide advisory and advocacy services to vulnerable electricity consumers who are connected to the grid, with complaints against a business supplying (or refusing to supply) goods or services.⁴⁹ Within Citizens Advice, the Extra Help Unit (EHU) is a further service which takes referrals to assist with the most critical situations, such as consumers who are at risk of being disconnected. As well as the targeted support and advocacy that Citizens Advice and Citizens Advice Scotland provide, these organisations are also required (by Section 19A of CEARA 2007) to deliver and update as appropriate, guidance on issues relevant for energy consumers.

As uptake of demand flexibility services increases, instances where energy consumers need advocacy, help or general guidance around the DSR load control of ESAs will become more prevalent. Though harm caused by DSR load control services is likely to be less impactful than supply-related detriment, it could still be important for building consumer confidence in the sector and avoiding detriment. Such advocacy, advice and guidance roles could be played by Citizens Advice, Citizens Advice Scotland or other providers of consumer advice across the economy.

⁴⁸ Ofgem, 'Ofgem, Alternative Dispute Resolution scheme for brokers and Third Party Intermediaries: what your Microbusiness needs to know' (2022), <https://www.ofgem.gov.uk/publications/alternative-dispute-resolution-scheme-brokers-and-third-party-intermediaries-what-your-microbusiness-needs-know> (viewed on 24 February 2024)

⁴⁹ For the purposes of these advisory and advocacy services, consumers are considered vulnerable if it is not reasonable to expect them to pursue their complaint themselves.

Proposed approach and rationale

Government will further consider the case for independent advocacy and guidance for consumers who have signed up for DSR load control services.

For critical situations involving both supply and DSR (in particular those where there is a risk of disconnection) where independent help could be needed for a vulnerable consumer, Government believes such cases could already be referred to the EHU and would be in scope of Citizen's Advice existing statutory remit to assist with issues around supply disconnection as set out in legislation. Government will continue to collaborate with Ofgem and engage with Citizens Advice to understand whether EHU cases involve DSR load control services.

For more general advocacy and guidance services, Government sees clear benefits these could provide in increasing confidence and avoiding detriment for consumers engaged in DSR services. A consumer advocacy body could refer a vulnerable consumer's problem to a DSRSP, giving the consumer guidance on how to resolve the issue, or perhaps even give a DSRSP context for a consumer's vulnerable situation not previously known to the DSRSP that warrants a particular approach to handling their case. General guidance around DSR load control services could be valuable for consumers, particularly as these will be novel services for many consumers, and there can be technical challenges involved in the load control of ESAs. We welcome stakeholder views on what role advocacy and guidance services could play for DSR consumers, and how they could improve consumer confidence and avoid detriment.

There is a precedent in the rest of the energy sector for Citizens Advice and Citizens Advice Scotland to play a leading function in providing such advocacy and guidance services around DSR. However, government also notes other consumer advice services could play valuable roles too. At this stage, we do not have a firm position on which organisations should deliver which potential functions around consumer advocacy and guidance, and we will further consider stakeholders' views on this.

Government acknowledges that any new involvement of consumer advice organisations would likely come with costs associated with the additional resource they would likely dedicate to develop guidance materials or engage with DSR consumers who have issues. We will further consider such costs against the benefits that such services could bring to both DSR consumers in vulnerable situations and also DSR consumers more generally.

20. Do you think government should extend consumer advocacy and advice services to cover issues related to DSR load control? If so, what particular services do you think would be useful for DSR consumers? Please give reasons for your answer.

Defining 'vulnerable situations'

Background

Within the objective of consumer protection there is a category of domestic consumers who, resulting from their personal circumstances or characteristics, are in a vulnerable situation. Vulnerable situations could be created or exacerbated by poor DSRSP behaviour, so considering the ways in which a licence can ensure services providers are mindful of vulnerability in the early stages of sector development could minimise the chance of this and embed this culture in the market as it grows. Negative social impacts could be introduced if

such considerations are not made from the beginning, for example disabled consumers may suffer harm through inability to effectively manage their service⁵⁰. Building in obligations to identify consumers in vulnerable situations from the early stages of the market ensures that DSRSPs are better positioned to consider how to treat these consumers fairly and to tailor their services to meet the consumers' needs. To assist DSRSPs to identify these consumers, we must first consider how to define vulnerable situations.

Proposed approach and rationale

We propose to follow the approach of the Electricity Supply Licence, which contains a broad and inclusive definition of vulnerable situations.

'Vulnerable situations'

Means the personal circumstances and characteristics of each Domestic Customer create a situation where he or she is:

- a) significantly less able than a typical Domestic Customer to protect or represent his or her interests; and/or*
- b) significantly more likely than a typical Domestic Customer to suffer detriment or that detriment is likely to be more substantial⁵¹.*

The definition of 'vulnerable situations' proposed, and by extension the specific protections explored in this chapter, apply to domestic consumers only. For DSRSPs to take proactive action on inclusion of consumers in this category, a consistent definition is important. Vulnerable situations are inherently complex to define due to the multiple factors at play, including personal characteristics, the specific scenario, and the way that the market responds to consumers' additional needs. Additionally, vulnerable situations can be transient, meaning that consumers may move in and out of vulnerability. This adds complexity to defining them.

In their Consumer Vulnerability Strategy 2025⁵², Ofgem refer to the supply licence where a wide definition of 'vulnerable situations' is used to do justice to the dynamic nature of the many types of vulnerability consumers can face. When such a definition is applied it is not only disabilities, financial and living situations that classify a vulnerable situation, but also characteristics such as low confidence and not speaking English as a first language. The Strategy notes some difficulty in operationalising the definition, but this is rationalised by a need to recognise the span and complexity of vulnerability, even where this is difficult.

The openness of the definition used in the Electricity Supply Licence poses advantages in inclusivity and a recognition of the complexity of vulnerable situations; however, government must consider if a tighter definition of vulnerable situations, such as one that focuses on specific situations, such as disabilities or low incomes, would be preferable at an early stage of the market. This approach poses benefits such as consistency and possible improvement of the benefit of entering the market compared to the cost, especially for smaller organisations.

⁵⁰ Centre for Sustainable Energy, 'Smart & Fair' (2020), <https://www.cse.org.uk/resource/smart-fair/> (viewed on 24 February 2024)

⁵¹ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For the definition of 'vulnerable situations' in the Electricity Supply Licence please refer to 'Definitions' within 'Condition 0. Treating Domestic Customers Fairly', page 11

⁵² Ofgem, 'Consumer Vulnerability Strategy 2025' (2019), <https://www.ofgem.gov.uk/publications/consumer-vulnerability-strategy-2025> (viewed on 24 February 2024)

Government could alternatively choose not to define vulnerable situations at this time. DSRSPs could develop their own definitions and processes around vulnerable situations if they chose to; however, there is a risk of significant consumer detriment and inequality of treatment if different approaches are applied across the market or if vulnerable situations are not recognised at all.

21. Do you agree with the proposal to use the definition of vulnerable situations used in the Electricity Supply Licence? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.

Identification and record-keeping of vulnerable situations

Background

For DSRSPs to deliver equal outcomes to consumers in vulnerable situations, government believes it is important for DSRSPs to first identify such consumers. We expect that identification will help DSRSPs to offer adjustments that improve accessibility and inclusivity, as explored in the next section. Data on how many consumers in vulnerable situations are using a service could also assist DSRSPs in determining how accessible their current offerings are. The Electricity Supply Licence places requirements on suppliers to seek to identify and appropriately record consumers in vulnerable situations, including adding them to the Priority Services Register (PSR). For consumers on the PSR, suppliers must deliver, when required, specified services related to communication, access and safety. Distribution Licence holders are also expected to collect necessary consumer information and maintain a PSR.

Across energy suppliers, DNOs and water suppliers, there is ongoing industry work to enable data sharing between DSRSPs where a customer has already informed one of them of their need for additional support and is content for their information to be shared with their other providers. The November 2023 consultation ‘Smarter regulation: strengthening the economic regulation of the energy, water and telecoms sectors’ by the Department for Business and Trade proposes that government will coordinate and work collaboratively with regulators, industry and devolved administrations to explore the creation of a single, multi-sector PSR⁵³. This would require the consumer to disclose their vulnerable situation only once, with organisations sharing relevant data with each other on the basis of legitimate interest and substantial public interest. These connected PSRs use a consistent series of ‘needs codes’ which define the specific vulnerable situation. DSRSPs may be able to join to this initiative in the future, but, to effectively do so, they should align with these needs codes.

This approach could represent a significant improvement in the experience of consumers who currently must disclose their situation to their utility providers separately and must make their new supplier aware of their situation every time they switch. This may feed into a longer-term ambition to develop a ‘universal PSR’ incorporating the aforementioned utilities alongside other services such as telecoms. Due to this solution being in its early stages, government cannot rely on the opportunity to involve DSRSPs at this time but can consider how to set up processes so that they can transition towards involvement in a universal PSR in the future.

⁵³ GOV.UK, ‘Smarter regulation: strengthening the economic regulation of the energy, water and telecoms sectors’ (2023), <https://www.gov.uk/government/consultations/smarter-regulation-strengthening-the-economic-regulation-of-the-energy-water-and-telecoms-sectors>, consultation closed 28 January 2024 (viewed on 8 March)

Proposed approach and rationale

Government proposes to initially require DSRSPs to keep their own internal records of consumers in vulnerable situations, in line with UK-GDPR. We are open to views on requiring DSRSPs to offer specified priority services. We expect that DSRSPs should be able to benefit from efforts across other utilities to bring together PSRs in future.

The nature of DSR services means they are less likely to deliver significant detriment to consumers than supply if a problem is experienced; however, government still recognises a benefit to DSRSPs keeping record of vulnerable situations. Identification is imperative to ensuring that consumers are treated in accordance with their needs and that any contract formed between that consumer and the DSRSP is useable, beneficial, and does not carry unreasonable levels of risk. If consumer vulnerabilities are not identified either before the consumer signs a contract or during service, the DSRSP may not realise that the service may be inappropriate or inaccessible for the consumer until detriment has been experienced. For example, identification and recording of vulnerable situations means DSRSPs can take this information into account in the services they provide consumers, such as accessible communications. This is explored further in the following section.

Government believes there would still be merit to identifying and recording vulnerable situations without offering the full provision of priority services that suppliers and DNOs do. Our initial proposal requires DSRSPs to keep internal records which would inform actions to take to treat consumers fairly but without the need to deliver specified priority services. If a general principle of fairness is applied, DSRSPs would have to treat consumers fairly with appropriate consideration of vulnerable situations; however, this may be too broad to cover specific priority services that could be beneficial for DSR consumers. With this in mind, we are open to defining priority services that DSRSPs must deliver, particularly those aligned with SLC 26.5 (a)⁵⁴, (b)⁵⁵ and (e)⁵⁶. These priority services are:

- offering additional support to assist the domestic consumer to identify any person acting on behalf of the licensee;
- a person nominated by, or otherwise legally entitled to act on behalf of, the consumer being able to receive communications relating to their account; and
- using an accessible format for communication appropriate to the consumer's needs on the basis of their characteristics and situation.

Requirements for organisations to put their own processes in place to seek to identify consumers in vulnerable situations may provide some challenge for DSRSPs to deliver during the early stages of market development; however, government believes that identification is imperative to delivering equal outcomes to consumers, including those with additional needs, across the whole DSR market.

⁵⁴ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 26.5 (a) in the Electricity Supply Licence (SLC26.5 (a)), 'Duty to offer services' in 'Priority Services Register', please refer to the Electricity Supply Licence, page 234

⁵⁵ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 26.5 (b) in the Electricity Supply Licence (SLC26.5 (b)), 'Duty to offer services' in 'Priority Services Register', please refer to the Electricity Supply Licence, page 234

⁵⁶ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 26.5 (e) in the Electricity Supply Licence (SLC26.5 (e)), 'Duty to offer services' in 'Priority Services Register', please refer to the Electricity Supply Licence, page 235

We also considered requiring DSRSPs to own and maintain their own PSRs and to offer the full provision of priority services required by suppliers. We assessed other services identified in SLC 26.5, (c), (d), and (f), and determined these were mainly related to the activity of supply (for example helping a customer operate a pre-payment meter), rather than DSR services, so deemed them disproportionate to apply to DSRSPs.

Another approach we considered was to give DSRSPs access to existing PSRs held by suppliers. This would be advantageous in aligning to the aspiration for a universal PSR and would mean that consumers in vulnerable situations would not have to disclose their situations again to their DSRSP if already shared with their supplier. Government recognises these potential benefits, but also notes the technical and data protection challenges associated with systematically sharing this personal data (which could be particularly sensitive) between organisations. Alternatively, government could opt to take no action via licence conditions at this stage. This approach invites the risk that consumers in vulnerable situations are left behind in the transition towards smart technology and flexibility, or that they suffer unreasonable levels of detriment when participating due to their situation not being recognised or considered throughout their service.

22. Do you agree with the proposal that DSRSPs should seek to identify and maintain their own records of consumers in vulnerable situations? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.

23. Do you think DSRSPs should be required to deliver the priority services defined in SLC 26.5 (a), (b) and (e), and/or any other priority services in the Electricity Supply Licence?

Inclusive and accessible design and communication

Background

As smart technology and the demand flexibility sector grows, services and organisations will continue to innovate in response to consumer feedback. Because early adopter groups are often not representative of protected characteristics within wider society, there is a risk that services or technologies develop to be unsuitable for some consumers in vulnerable situations; for example, due to accessibility needs not being met for disabled consumers. This could be related to the ability to operate a process on an application that is used to manage the DSR service where, if the process is poorly designed for accessibility, the consumer may be unable to view details of their service or amend their preferences. This could create a situation where the service is no longer suited to the consumer's schedule, but they are unable to easily update it.

As a result of the proposal in this consultation to identify and record vulnerable situations in the previous section, DSRSPs could have data that could help them better understand the needs of their consumers and inform development of measures related to inclusivity and accessibility of their services. In existing law, the Equality Act 2010⁵⁷ requires service providers to make reasonable adjustments where disabled persons would be put at a substantial disadvantage, compared to persons who are not disabled, by a service provider's measure or by the lack of

⁵⁷ Equality Act 2010, available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents> (viewed on 24 February 2024)

an aid or support to provide additional assistance. The duty is anticipatory, in that it requires proactively consideration of potential barriers and accessibility requirements for disabled persons and taking action in relation to these.

A further consideration is whether DSRSPs will develop services that suit consumers in different circumstances. For example, a household where someone has a medical reliance on their home being at a certain temperature may not be suited to a service where a heat pump provides flexibility, but they may still benefit from a flexibility service for charging their electric vehicle. The 'Smart and Fair?'⁵⁸ research programme by The Centre for Sustainable Energy emphasises the concern that a significant transition creates new ways for unfairness to impact consumers and encourages industry to embrace the principle that nobody should be left behind. Citizens Advice's report, 'A flexible future'⁵⁹, highlights barriers to participation for consumers and recommends inclusive innovation from industry to facilitate product and service design focused on accessibility.

Separately to the design of services themselves, accessibility requirements around communications are crucial to some consumers' ability to engage with services. Regarding information and communications, the Equality Act 2010 requires organisations to anticipate the need for alternative formats and make these available without consumers having to request them.

Proposed approach and rationale

At this stage, we propose no new legal requirements around accessibility of DSR services in a licence. We believe that the Equality Act 2010 provides suitable protection for disabled consumers; however, government is open to its role on how it can use its position to drive forward accessibility in the smart energy sector, both in terms of service interfaces and services on offer to consumers.

By effectively requiring DSRSPs to pre-empt reasonable adjustments and proactively consider accessibility needs, the Equality Act 2010 reduces the risk that disabled consumers will not have their accessibility needs met by DSRSPs. Due to the existing coverage of the legislation, government believes there will not be a further need for a licence to lay additional requirements on considering accessibility of service processes. Additionally, regarding communications, there is a close link with the priority service defined in SLC 26.5 (e), on which views are sought in the previous section and which could reinforce the importance of accessible communication methods.

Government is making progress towards this aim via work outside of the SSES programme. The Inclusive Smart Solutions Programme⁶⁰ aims to use research and consumer engagement to greater understand the barriers faced by consumers in the transition towards a smart and flexible energy system. Additionally, an accessibility standard for electric vehicle charging has been developed by the British Standards Institution (BSI) and launched as PAS 1899⁶¹.

⁵⁸ 'Smart & Fair' (2020), <https://www.cse.org.uk/resource/smart-fair/>

⁵⁹ Citizen's Advice, 'A flexible future: extending the benefits of energy flexibility to more people' (2023), <https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/a-flexible-future-extending-the-benefits-of-energy-flexibility-to-more-people/> (viewed on 24 February 2024)

⁶⁰ GOV.UK, 'Inclusive Smart Solutions Programme' (2023), <https://www.gov.uk/government/publications/inclusive-smart-solutions-programme>, programme now closed to applications (viewed on 24 February 2024)

⁶¹ British Standards Institution, 'PAS 1899 – Electric vehicles accessible charging specification' (2022), <https://knowledge.bsigroup.com/products/electric-vehicles-accessible-ev-charging-points-specification?version=standard> (viewed on 24 February 2024)

Government is open to considering whether a wider accessibility standard for ESAs or other smart energy consumer interfaces could be produced in the future too.

Government has considered the inclusion of specific licence conditions which reiterate and add greater detail to the existing legal requirements around reasonable adjustments. Many people in vulnerable situations may benefit from use of DSR as a more cost-effective way of consuming energy, so government believes that they should have the opportunity to benefit via participation. Additional duties for DSRSPs around considering different vulnerable situations when designing services could not only reduce the chance of those consumers being left behind in the energy flexibility transition, but also improve outcomes for all in terms of service accessibility and communications. Government recognises the benefits of a greater focus on accessibility and inclusivity but does not have evidence to suggest the Equality Act 2010 alone will be insufficient. Some services may be inappropriate for certain vulnerabilities; so, if creating additional requirements, government must draw a balance as to what kind of adjustments should be required. The limits of the Equality Act 2010 are well defined regarding what makes an adjustment reasonable, so government does not currently intend to draw different lines for DSRSPs. Additionally, instructing best practice via licence conditions may be challenging due to the early stage of the market. Government believes that DSRSPs will be best placed to define best practice over time and through experience.

24. Do you agree with the position that the Equality Act 2010 provides sufficient protection regarding inclusivity and accessibility of the design of DSR processes and services? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.

Consumer control over a load control DSR service

Background

Although a consumer who has entered a DSR service may have agreed to allow for automatic control of their ESAs as part of the service by default, there may be occasions where they would expect the ability to request a cancellation of a DSR action. Government strongly believes that consumers should always have ultimate control of the devices they use in their homes or businesses. We believe consumers should be able to override a remote load control action for any reason, but there are situations where this could be particularly important, like unexpected events or short-term schedule changes – for example, needing access to a fully-charged electric vehicle at short notice. The absence of this function may leave the consumer in a difficult situation that they are unable to rectify and discourage them from using DSR services in the future.

The importance of consumers' control over their devices is why we have proposed to require the ability to override any DSR action through an interface provided with an ESA – as discussed in our ESA consultation⁶². To complement this requirement for an override to be provided through an ESA interface, government has explored further measures to take in the

⁶² British Standards Institution, 'PAS 1878 – Energy smart appliances' (2021), <https://knowledge.bsigroup.com/products/energy-smart-appliances-system-functionality-and-architecture-specification?version=standard> (viewed on 24 February 2024). Government notes that PAS 1878 details how an override functionality must be built into Energy Smart Appliances (ESAs). 'Override' is one of the four states which form the ESA's operating mode hierarchy within PAS 1878. Through this device standard it must be possible for the consumer to instigate override mode at any time to cancel a DSR action via their device interface, which could be either physical or remote

load control licence to ensure consumers have maximum reasonable control of their DSR services through other interfaces they would reasonably expect to use.

Proposed policy approach and rationale

We propose that, in the instance that a DSRSP provides an interface which allows a consumer to change preferences for the load control of their ESA, the DSRSP must at all times provide a consumer the option through this interface to request the cancellation of remote load control of their ESA, whether the load control is planned or in effect.

We further propose that a DSRSP shall not impede any cancellation request or override made through other user interfaces provided with an ESA.

Having observed the diversity of current approaches in the demand flexibility market, government expects that different consumers could be able to control the load of their ESAs being used for DSR through different user interfaces. For example, for some EV charging services we observe currently, a charge point's load could feasibly be controlled through three different interfaces: 1) on a physical interface on the charging hardware itself, or 2) through an app provided by a charge point manufacturer, or 3) through an app provided by the DSRSP. DSRSPs are able to control load through a remote interface should they have put in place appropriate technical or contractual arrangements (either themselves or through a collaborating third-party load controller) with an ESA manufacturer to be able to affect this load directly on their own app.

At this stage of market development and with consideration of our objective to support diversity of approaches in the sector, we do not see it appropriate to require DSRSPs to offer an interface separate from an ESA interface to control their service. DSRSPs may build business approaches around consumers wanting to control their device only through an interface provided by the ESA manufacturer. However, in the instance that a DSRSP has provided a separate interface to a consumer, and that interface gives the consumer the option to change their preferences for the service, government thinks it would be reasonable for a consumer to expect to be able to manage their preferences for how their device is controlled at any time, and therefore propose making this a requirement in the licence. We see this functionality to request the cancellation of a DSR action to be in addition to the override functionality we propose requiring at an ESA level in our ESA consultation. This will give consumers multiple routes to cancel load control of their ESA and will more likely result in them having a positive experience engaging in DSR services.

Government thinks that the requirement not to impede other interfaces meets our policy intent to give consumers the option to stop individual DSR actions through any interface where they may reasonably expect to be able to do so. In the instance that a consumer has both a DSR service user interface and an ESA user interface, they would be able to use both without any DSRSP impediment, giving them greater confidence in their ability to control their service. For the avoidance of doubt, the requirement for a DSRSP not to impede a change in load control action would not apply if this would cause a safety issue in the ESA or be to the wider detriment of the consumer.

25. Do you agree with our proposal around requiring DSRSPs, in the scenario that they offer an interface to consumers to manage their service, to offer the option for the consumer to request cancellation of load control of their ESA? Please explain your answer.

Future guidance and requirements

Government is open in future to making further requirements or guidance around how DSRSPs allow their customers to control their preferences for a DSR service, should it be clear it would significantly improve the consumer experience of DSR services. Some areas where future guidance or requirements could help improve the consumer experience are explored below.

Requirement to provide a remote interface to control service preferences

Government is open to a further future requirement that all DSRSPs offer an interface for service management, therefore meaning that all providers must offer the ability to request cancellation of remote load control of their ESA through that interface.

Requirements around ease and cost of requesting the cancellation of a DSR action

If it is difficult to cancel DSR, for example if the option is not easily visible in a DSRSP's interface, or a cancellation request has punitive costs associated with it, this could result in a negative experience for a consumer. We do not currently see evidence in the market to indicate that this is a significant risk, and we would expect that DSRSP will want to provide a positive experience for their customers. However, we are open in future to developing further requirements around ease of access and cost of requesting DSR cancellation should market monitoring suggest this to be necessary.

26. Do you think any further guidance or requirements related to the consumer's ability to request cancellation of a remote load control action through a DSRSP could be warranted now or in the future? Please explain your answer, making reference to the potential requirements outlined in the consultation as well as any further requirements not discussed.

Summary of proposed consumer protection measures

27. Does the proposed package of consumer protection measures offer sufficient protections to consumers while also enabling DSRSPs to develop innovative service offerings? Please explain your answer.

28. How do you anticipate that the proposed package of consumer protection measures will impact new entrants to the market, and do you expect that any mitigation is required to reduce barriers to entry?

29. Should government include any further requirements to protect consumers in the load control licence not covered in this chapter? Please reference specific requirements where appropriate.

30. For businesses in scope of the licence: Which resources (FTE) or costs (£) are you currently using to deliver consumer protection measures?

31. For businesses in scope of the licence: Which resources (FTE) or costs (£) would you have to use to comply with the consumer protection requirements set out in this chapter (ideally broken down by topic)?

Table 1. Summary of all proposed consumer protection measures.

Topic	Proposed position
General consumer protection principle	We propose that the load control licence includes a general principle of fairness to domestic and small non-domestic consumers. We will consider which of the more detailed obligations in the Standards of Conduct should apply to DSRSPs.
Recommending suitable services	<p>We propose to follow the Electricity Supply Licence approach with consumer communication principles included in Standards of Conduct in a general consumer protection condition.</p> <p>Additionally, we propose a separate condition to the effect that DSRSPs may only recommend services that are suitable to the individual consumer's characteristics and preferences (similar to SLC 25.5).</p>
Complaints procedures	<p>We propose for DSRSPs to follow requirements around complaints processes based on the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 (the '2008 Regulations').</p> <p>Though we are currently minded to base licence conditions requiring a complaints process on the 2008 Regulations, we welcome views on any adaptations needed to address the particular circumstances of DSRSPs and their customers, so long as consumers are sufficiently protected.</p>
Dispute resolution	<p>We propose that DSRSPs be required to participate in an ADR service to provide dispute resolution to their consumers.</p> <p>We are open to the option of permitting multiple ADR providers. We invite views on whether similar consistency of consumer outcomes could be achieved through allowing multiple providers.</p>
Independent consumer advocacy and guidance	Though we do not have a preferred approach at present, government is open to expanding the remit of statutory advice related to complaints to cover demand flexibility services, so long as extending this service represents a proportionate cost for wider consumers.
Defining 'vulnerable situations'	We propose to follow the approach of the Electricity Supply Licence, which contains a broad and inclusive definition of vulnerable situations.
Identification and record-keeping of vulnerable situations	Government proposes to initially require DSRSPs to keep their own internal records of consumers in vulnerable situations, in line with UK-GDPR. We are open to views on requiring DSRSPs to offer specified priority services. We expect that DSRSPs should be able to benefit from efforts across other utilities to bring together PSRs in future.

Topic	Proposed position
<p>Inclusive and accessible design and communication</p>	<p>At this stage, we propose no new legal requirements around accessibility of DSR services in a licence. We believe that the Equality Act 2010 provides suitable protection for disabled consumers; however, government is open to its role on how it can use its position to drive forward accessibility in the smart energy sector, both in terms of service interfaces and services on offer to consumers.</p>
<p>Consumer control over service</p>	<p>We propose that, in the instance that a DSRSP provides an interface which allows a consumer to change preferences for the load control of their ESA, the DSRSP must at all times provide a consumer the option through this interface to request the cancellation of remote load control of their ESA, whether the load control is planned or in effect.</p> <p>We further propose that a DSRSP shall not impede any cancellation request or override made through other user interfaces provided with an ESA.</p>

5. Consumer switching

Context

Government believes that domestic and small non-domestic consumers should be able to use their energy smart appliances across different DSRSPs and Load Controllers easily and still expect a minimum level of DSR services. Government sees enabling the technical interoperability of ESAs through requirements on device manufacturers and sellers as the primary route to enable the overall outcome of an active DSR market with switching consumers. Measures to enable technical interoperability of ESAs are discussed further in our ESA consultation.

To complement the foundation set by ESA-level technical interoperability, government believes a load control licence should include measures that ensure consumers can switch their ESAs across different DSRSPs without undue practical barriers such as a premises visit or financial barriers such as punitive exit fees, and that service providers taking on new consumers can do so in an orderly way. This chapter proposes policy options on these issues.

Exiting a DSR service

Background

Consumers exiting a service may be subject to exit fees as agreed within the contract. Existing consumer protection law dictates that cancellation charges must be genuine estimates of the business' direct loss⁶³. These existing protections apply to domestic consumers only. For energy supply, this requirement is further enshrined in a licence condition which requires that any termination fees for a supply contract do not exceed the financial loss experienced by the supplier when the consumer leaves the contract (SLC24.3A)⁶⁴. This condition only applies to the ending of a contract for the service of electricity supply, but not other services, like load control of an ESA. Such an approach allows licensed suppliers to reasonably recoup their losses but without undue cost to the consumer and prevents consumers from being unfairly tied in by a fee they are unable to pay.

There could be situations where consumers might want to use an ESA bundled with a service by one provider as part of services with another provider, but they may not have paid the full cost of the device. Though wider protections in consumer law provide a good baseline, government sees benefits in outlining explicit requirements allowing consumers to exit a DSR service and requirements around the fairness of any service exit fees for a DSR service in a load control licence. Government observes some current business approaches in the market where DSRSPs are 'bundling' ESAs with their services. Such ESAs could carry significant costs, so consumer's having a baseline of protections and having an understanding of the process and costs associated with leaving a load control service could be important.

⁶³ Consumer Rights Act 2015, available at: <https://www.legislation.gov.uk/ukpga/2015/15/contents> (viewed on 8 April 2024)

⁶⁴ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 24.3A in the Electricity Supply Licence (SLC24.3A), 'Termination Fees', please refer to the Electricity Supply Licence, page 215

Specific protections would seek to address the risk that consumers are locked into a service with an individual DSRSP and are possibly unable to access better deals from other DSRSPs. A licence condition would additionally extend protections to small non-domestic consumers who would not receive the same protections from existing general consumer protection law. We expect this to be a minimal change for DSRSPs as the proposal is largely aligned with existing consumer protection requirements that apply to domestic consumers.

Proposed approach and rationale

We propose a condition that requires DSR Service Providers to give consumers the option to exit a contract while allowing the DSR Service Provider to proportionately recover associated costs from the consumer.

Without intervention, consumer switching between load control services could be prevented by contractual barriers between the consumer and an incumbent DSRSP. Even if there are fees associated with their exit, switching providers could benefit consumers – for example different propositions could fit their life circumstances at different times, or the new service might still work out cheaper than their existing service even with exit fees. Enabling consumer switching will enable competition amongst different DSRSPs, encouraging them to build offerings that deliver more value for consumers and the electricity system.

Government also believes that a consumer who wishes to use an ESA provided by an incumbent load control service (for which they would contract with a DSRSP) as part of a new service should be able to do so in all reasonable circumstances. First and foremost, government wants to enable this outcome of easy switching for consumers by encouraging the technical interoperability of the ESA between different organisations – as discussed in our accompanying consultation on ESAs.

We think, even if there are costs associated with their exit, that consumers should always have the option to switch DSRSPs and this should be reflected in the load control licence.

We are open on how to define “proportionate” costs associated with a consumer’s service exit, either taking precedent from the Electricity Supply Licence, or by relying on the ‘fairness’ definition to be developed as part of the load control licence consumer protection principle.

DSRSPs may reasonably develop contractual arrangements around recouping costs where a consumer decides to switch providers. For example, they may include an agreement that the consumer pay outstanding unpaid costs if they wish to switch an ESA that is bundled with the service to a new DSRSP. Whilst such contractual arrangements may act as a barrier to switching, government believes they could be fair. Given the reasonable needs of both consumers and DSRSPs in such situations, we believe a requirement on the proportionality and fairness of exit requirements fees could provide useful clarity.

The Electricity Supply Licence takes the approach of saying any termination fees must be “proportionate”, and “must not exceed the direct economic loss to the licensee...including the costs of any Non-Energy Product”⁶⁵. A similar condition could be considered for the load

⁶⁵ ‘Licence and licence conditions’, <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. In the Electricity Supply Licence, a ‘Non-Energy Product’ is defined as ‘any goods and/or services that could not reasonably be considered as being directly related to the supply of gas and or electricity to premises’. Please refer to the Electricity Supply Licence, ‘Definitions’, page 33

control licence, though the definition of a “Non-Energy Product” in relation to ESAs in scope of the licence could require further consideration.

Alternatively, the load control licence could take a different approach to that taken currently in the supply licence and say there must not be any ‘unfair’ costs for a consumer exiting a service. For this approach, government believes the definition of ‘fairness’ could align with the wider definition in the proposed overarching consumer protection principle for the load control licence. We expect instances of ‘fair’ exit costs could be supported by further guidance for the licence issued by Ofgem.

Government could additionally consider measures on the visibility of terms around a consumer’s exit, particularly on fees, such as an obligation that they are displayed prominently alongside other key service information when a consumer is considering a service. Although any exit fee must be defined in the contract to be enforceable, any fees being displayed more prominently could make this information easier for consumers to access and consider. We have not seen evidence that suggests a pertinent risk around the visibility of exit terms for load control services currently, so we do not present a policy preference at this point. However, we are open to the licence including relevant conditions on this in the future. We also acknowledge that visibility of terms around relevant arrangements for ESAs could be covered by existing requirements from the Financial Conduct Authority⁶⁶.

32. Do you agree with government’s proposal to include a requirement in the licence requiring DSRSPs to allow consumers to exit a service? Please give reasons for your answer.

33. Do you agree with government’s proposal for a condition that fees associated with a consumer’s service exit should be proportionate, and if so, do you have a preference as to how ‘proportionate’ is defined? Please explain your answer.

34. Do you think any further requirements around service exit need to be included in the licence, for example around the visibility of exit fees at the consumer contract? Please give reasons for your answer.

Technical interoperability of ESAs provided with a DSR service

Background

Where a consumer enters a contract for a DSR service, an ESA might be provided to the consumer ‘bundled’ as part of the overall service. The DSRSP, or a third party acting on their behalf, may ‘bundle’ this ESA with the service through different ways, including, but not limited to:

- selling the ESA outright to the consumer, with the consumer paying the full cost of the ESA up-front
- selling the ESA to the consumer but also providing finance to the consumer for the consumer to purchase the ESA (selling with finance)

⁶⁶ Financial Conduct Authority, ‘FCA Handbook, CONC 4.2 Pre-contract disclosure and adequate explanations’, <https://www.handbook.fca.org.uk/handbook/CONC/4/2.html> (viewed on 24 February 2024)

- letting the ESA on hire to a consumer
- letting the ESA on hire to a consumer, with the ability for a consumer to make regular payments to own the device at the end of a relevant period

Other services, like installation of the ESA in a consumer's property and service agreements might also be bundled with a load control service. As more partnerships are taking place in industry, there is a risk that ESAs could have their smart functionality restricted to a certain DSRSP. This would limit competition and prevent consumers swapping provider to meet their preferences or requirements or to access better deals.

Proposed approach and rationale

We currently propose no interventions in the licence at this stage around the technical interoperability of ESAs provided with a DSR service, since we already plan to put in place relevant interoperability requirements applying to the sale of the ESA, which should apply to all 'bundling' approaches by load control licensees.

In all the above situations the DSRSP or the third party acting on their behalf, will be acting legally as an ESA seller. We expect the legal definition of "sell" to follow that of the EV Smart Charging Regulations to also include let on hire, lend or give. Therefore, all technical interoperability requirements that government proposes in this consultation package that apply to ESAs at the point of sale would apply to the provision of an ESA bundled with a DSR service provided by a DSRSP, since we intend the definition of 'selling' in device-level regulations proposed by the SSES programme to also include letting on hire.

Although we think mandating technical interoperability through the load control licence is premature at this time, we will revisit this position once the enduring technical standards framework for ESAs is developed. Once this framework has been established, government may place requirements on DSRSPs and Load Controllers to ensure technical interoperability of ESAs is delivered.

Orderly switching

Background

Though the interventions proposed by government above in this chapter and the ESA consultation may address the technical and financial barriers to consumers switching their load control services, there may still be practical areas that prevent an orderly switching process between two organisations. The energy supply market has demonstrated the positive impact that proper switching procedures amongst industry parties can create for the consumer experience, and the role government and Ofgem can play to encourage industry parties towards these common standards and approaches. For telecommunications, where mobile phone hardware used by a consumer is provided by an organisation alongside SIM services, the regulator successfully intervened to ensure positive switching for consumers wishing to use their device across different mobile network providers.

Proposed approach and rationale

We propose the licence should require that DSR Service Providers must not obstruct a consumer switching to another DSR Service Provider provided all contractual obligations by the consumer (including proportionate costs) have been met.

To support this outcome-level requirement, we are open to putting in place requirements in the licence enabling the orderly switching of ESAs between different DSRSPs and seek stakeholder views on what these requirements could be.

In the instance a consumer has decided to exit a DSR service, and reasonable costs associated with their exit have been covered, government believes that the exiting DSRSP should not create any other barriers to a future DSRSP providing their services to a consumer.

Requirements enabling this orderly switching between DSRSPs could include, amongst other conditions:

- specifying the time period after a consumer exit from a DSR service has been confirmed for the DSRSP, or a party acting on their behalf, to remove their abilities to control the relevant consumer's ESA
- the instructions which the exiting DSRSP gives to consumers and any new DSRSP to enable their device to be controlled as part of another load control service
- the format of personal data which consumers may port across different services under the UK's current data protection framework

We believe industry parties have a key role to play in defining the best practices for switching amongst themselves, but a licence could play a role in orderly switching by making adherence to these practices a legal requirement and requiring organisations to engage in the development of these standards. Government notes that PAS1878:2021⁶⁷ provides an example sequence of how an ESA can switch between an incumbent and new DSRSP. Industry Codes designated by Ofgem or other industry-developed standards could be promising mechanisms to allow for relevant industry parties to feed into the development of standards required for orderly ESA switching.

35. Do you think there should be requirements for DSRSPs to enable orderly switching of ESAs between services? What specific measures do you think might need to be covered as part of these requirements – including those referenced in this consultation? Please give reasons for your answer.

Costs to businesses

36. For businesses that would be in scope of the proposed DSRSP licence conditions: Could you set out the additional resource or cost you would incur for complying with requirements around consumer switching laid out in this chapter?

⁶⁷ 'PAS 1878 – Energy smart appliances' (2021), <https://knowledge.bsigroup.com/products/energy-smart-appliances-system-functionality-and-architecture-specification?version=standard>

6. Data privacy

Context

Organisations putting data privacy at the centre of Energy Smart Appliance (ESA) load control services will give consumers the confidence to participate in these new services, encouraging uptake and in turn increasing the potential overall benefits of demand flexibility for the electricity system. Proper consumer confidence and awareness around the legal framework for how their personal data is processed to deliver load control services will be key. UK-GDPR is the UK's overarching data protection framework. The way energy sector actors handle personal data from smart meters is governed by the Data Access and Privacy Framework (DAPF), which complements UK-GDPR by providing more specific requirements around legal bases of processing for different actors in the energy system for data from smart meters. The DAPF is a framework that describes the different data protection regimes and legislation that impact smart metering, including the Data Protection Act 2018 (UK-GDPR), Electricity Supply Licence Conditions, the Retail Energy Code and the Smart Energy Code.

Government has considered ESA load control data privacy policy from both an appliance and organisational perspective. For appliances, the SSES programme proposes mandating ETSI 303 645 for relevant ESAs, which has several principles relevant to protecting consumers' personal data. We also continue to support the development of the PAS 1878 ESA technical specification, which in its current version specifies a minimum information model for which a device must be capable of being operated for DSR services.

For organisations engaging in DSR services, those processing personal data must be compliant with the UK's data protection framework. In government's Spring 2023 response⁶⁸ to the SSES consultation⁶⁹, we committed to understanding whether, on top of this framework, specific requirements around data privacy for ESA load control services would be necessary to address consumer risks and maximise consumer confidence in the sector. The majority of stakeholder responses to our SSES consultation were of the view that UK-GDPR is sufficient. Respondents that disagreed thought additional measures should be introduced, with some suggesting that this should be implemented along similar lines to the DAPF.

Since our consultation response, government has further considered this stakeholder feedback and has engaged with Ofgem and the Information Commissioner's Office (ICO) to better understand how the legal obligations already in place for organisations in relation to data protection apply to the demand flexibility sector. In this chapter, we put forward our proposed position on what requirements around data privacy that load control licensees should be subject to beyond from UK-GDPR.

⁶⁸ 'Delivering a smart and secure electricity system: Government response to the 2022 consultation on interoperability and cyber security of energy smart appliances and remote load control' (2023), <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control>

⁶⁹ 'Delivering a smart and secure electricity system: consultation on interoperability and cyber security of energy smart appliances and remote load control' (2022), <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control>

The UK's Data Protection Framework

The Data Protection Act 2018 implemented the General Data Protection Regulation, known as UK-GDPR, and controls how personal data is used by organisations, businesses and the government. Currently, everyone responsible for using personal data has to follow strict rules called 'data protection principles'. They must make sure the information is:

- used fairly, lawfully and transparently
- used for specified, explicit purposes
- used in a way that is adequate, relevant and limited to only what is necessary
- accurate and, where necessary, kept up to date
- kept for no longer than is necessary
- handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage.

There are also stronger legal protections in place for more sensitive information, such as ethnic background, race and religious belief. UK-GDPR represents the data protection baseline which organisations across the economy have to follow⁷⁰.

The Data Protection and Digital Information Bill (DPDI), introduced to Parliament in March 2023, aims to update and simplify the UK's data protection framework, with a view to reducing burdens on organisations while maintaining high data protection standards⁷¹. The Bill would provide greater flexibility for businesses on how to comply with certain aspects of the data protection legislation; improving the clarity of the framework for consumers, providing more certainty, and stability for cross-border flows of personal data.

All organisations processing personal data, including prospective load control licensees and ESA manufacturers, must be compliant with UK-GDPR, and, subject to the will of Parliament, will need to comply with a revised data protection framework which is to be implemented through the DPDI. Currently, if organisations process what they deem to be high-risk data, they must already carry out a Data Protection Impact Assessment (DPIA). Under DPDI, the circumstances in which organisations carry out assessments will be more flexible.

As well as UK-GDPR, data processors are required to comply with the Privacy and Electronic Communications Regulations (PECR), which require that processors need opt-in consent from consumers to engage in direct marketing.

⁷⁰ Information Commissioners Office (2024), 'UK GDPR guidance and resources', <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/> (viewed on 21 March 2024)

⁷¹ Data Protection and Digital Information Bill, available at: (viewed on 21 March 2024) <https://bills.parliament.uk/bills/3430> (viewed on 21 March 2024)

Proposed policy approach and rationale

Using the UK's Data Protection Framework

At this time, we propose no further legal requirements on load control licensees around the processing of personal data in addition to the UK's current data protection framework or its potential future iteration under the DPDI.

UK-GDPR represents an effective mechanism to govern data protection in the wider economy, in sectors such as health, banking, and other utilities. Subject to responses to this consultation, we think it appropriately addresses data privacy considerations for load control services. To support the implementation of UK-GDPR, the ICO, as the UK's independent body set up to uphold information rights, already provides extensive guidance across data protection issues for organisations. This guidance provides a robust foundation which captures the sensitivities of using personal data. Industry respondents to the SSES consultation suggested a familiarity with the UK-GDPR and its principles. Through its focus on privacy outcomes, we believe UK-GDPR, and its potential iteration through DPDI, allows organisations to find the most effective and proportionate way of protecting people's personal data whilst keeping pace with an evolving technological landscape. Government therefore expects to place no further requirements on load control licensees in their role acting as processors of personal data at this stage.

To note, further requirements around the cyber security of communication with ESAs, such as a common approach to cryptography, could emerge as a result of government's ongoing work around a security architecture and trust model, which is due to be completed during 2024. Such potential requirements would be in response to government's overarching objectives of enabling the interoperability of ESA communication and maintaining grid stability as a result of aggregated load control of ESAs, though could have impacts on the way personal data is processed for load control services.

We are open to future legal requirements on load control licensees to protect personal data in response to emerging specific risks to consumer privacy from load control services or risks to the reputation of demand flexibility and consumer engagement.

Though at this stage in the demand flexibility market, government proposes no new specific requirements around data privacy for load control licensees, we are open to putting in place further measures should there be evidence to suggest that there are data privacy risks specific to load control services that require enhanced mitigations, or that doing so would significantly benefit consumer confidence in load control services as to improve uptake and engagement. To help inform further policy consideration, we welcome views and evidence from stakeholders through this consultation on the specific data privacy risks arising from load control services not already covered by UK-GDPR, and the role that further specific requirements through a licence could play in increasing and maintaining consumer confidence in the demand flexibility sector.

We will continue to monitor activities related to enabling informed consumer consent for sharing of personal data.

Government recognises that informed consumer consent processes are important to establish and maintain choice, transparency and trust in the sharing of personal energy data. In 2022 the Energy Digitalisation Taskforce (EDiT) report highlighted the need for an approach to consumer consent that gives customers control of their data, and confidence that it is used

responsibly. In our joint response to the report, government and Ofgem committed to examining consumer consent solutions to determine appropriate next steps.

Ofgem's recent Call for Input, 'Data Sharing in a Digital Future'⁷², contributes to this commitment. The Call for Input sets out how improved consent processes will give consumers control over how their data is shared and reduce barriers to participation in a smart and flexible energy system. It examines and seeks feedback on proposals for a potential consumer consent solution. Ofgem intends to publish a consultation in 2024 to set out next steps. Government will continue to work with Ofgem to ensure any approach is aligned with all relevant data protection, data privacy, and security requirements.

37. Do you agree with our proposal for no further legal requirements on load control licensees around data privacy at this time? Please explain your answer.

38. Are there specific risks to consumers associated with the processing of personal data as part of load control services not addressed by the UK's data protection framework? Please explain your answer, referencing specific evidence where relevant.

39. Would specific requirements around the protection of personal data from load control services significantly improve consumer confidence in the sector? Please explain your answer, referencing specific evidence where relevant.

Providing assessments of data processing to Ofgem

Data Protection Impact Assessments

In the current UK-GDPR framework, a Data Protection Impact Assessment (DPIA) is a process to help organisations identify and minimise the data protection risks of their activities. Organisations must already do a DPIA for processing that is likely to result in a high risk to individuals, which includes some specified types of processing. A DPIA must:

- describe the nature, scope, context and purposes of the processing
- assess necessity, proportionality and compliance measures
- identify and assess risks to individuals
- identify any additional measures to mitigate those risks.

To assess the level of risk, a data processor must consider both the likelihood and the severity of any impact on individuals. The Data Protection and Digital Information Bill makes amendments to the UK-GDPR on when records need to be kept for processing activities. The Bill proposes a requirement for the information commissioner to produce a definition of high-risk processing.

We welcome views on requiring load control licensees, in the instance they have made the judgement that they process high-risk personal data and need to undertake an

⁷² Ofgem, 'Data Sharing in a Digital Future' (2023), <https://www.ofgem.gov.uk/publications/data-sharing-digital-future>, Call for Input closed 27 January 2024 (viewed on 13 March 2024)

assessment of processing, to provide the assessment to Ofgem for monitoring purposes.

A potentially promising route to assess whether further requirements could be needed in the future is through better understanding the processing activities of load control licensees. We expect Ofgem, with their existing powers as the regulator for energy sector licences, will have the ability to request organisations' assessments of their data processing (as with other wider information they can request). However, we believe that making it a requirement for load control licensees to proactively share their assessments (in the event they have undertaken one) with Ofgem as a condition of receiving a licence and on a regular basis could help reduce the burden on Ofgem of having to ask each licensee for their assessments, and could improve the evidence base for government and Ofgem to determine whether further action around data privacy for demand flexibility is needed.

Government does not expect that Ofgem would take any regulatory action themselves on the basis of receiving these assessments, but they could be an important tool to better understanding whether further requirements may be needed in the future. Ofgem's interactions with ICO around this potential monitoring role would require further consideration.

40. In the instance that a load control licensee has produced an assessment of its processing activities, do you think this assessment should be pro-actively shared with Ofgem? Please explain your answer.

Using codes of conduct

We are open to the creation of guidance around data protection specific to the demand flexibility sector, like a UK-GDPR Code of Conduct, as a mechanism to assist with load control licensee's compliance with UK-GDPR.

The government believes that additional sector-specific guidance could help in defining and encouraging best practice around processing personal data in relation to load control services. As outlined by the ICO, UK-GDPR Codes of Conduct are sector-specific guidelines to help comply with the UK-GDPR and can be created by trade associations and other representative bodies to help identify data protection issues that are important to their members⁷³. Codes of Conduct are approved by the ICO and reflect the requirements of different processing sectors and takes account of the specific needs of small and medium sized enterprises.

Bodies who are able to speak on behalf of a group of organisations can create, amend, or extend codes of conduct to help their sector comply with the UK-GDPR, enabling a flexible and not 'locked in' approach. Signing up to codes of conduct is voluntary for industry parties. Whilst Codes of Conduct help organisations meet the necessary criteria for UK-GDPR, they also advise on complex areas of data protection which could be of particular use to those involved in demand flexibility, for example, by defining good practices around legal bases for processing for different activities relevant to ESA load control.

41. Would the creation of sector-specific guidance, like an ICO-approved UK-GDPR code of conduct, be beneficial for consumers and load control licensees? Please explain your answer.

⁷³ Information Commissioner's Office, 'Codes of Conduct', <https://ico.org.uk/for-organisations/advice-and-services/codes-of-conduct/> (viewed on 24 February 2024)

7. Management and financial controls

Context

As the demand flexibility market continues to develop, government expects that measures around the management capabilities and financial responsibilities of load control licensees could contribute to achieving our overall objective of protecting consumers and the electricity system. Considering the importance of consumer confidence when engaging with new smart energy technology and services, government believes such measures could play an important role in mitigating against mismanagement of load control licensees, which would not only cause direct inconvenience to consumers, but could undermine confidence in the demand flexibility sector just as it becomes increasingly important to meeting our goals for a decarbonised electricity system. Given this, government has considered outcome-based requirements around management and financial controls for all load control licensees. We put forward policy proposals below.

Proposed policy approach and rationale

Management controls

Requirements for senior personnel

We propose a requirement for load control licensees to appoint or have in place fit and proper persons in senior positions.

If senior personnel are not fit and proper, there is a risk that they may operate their organisation irresponsibly or maliciously. This could cause significant detriment to consumers if such operation meant that they were unable to access vital services such as their vehicle charging or home heating system. It could also lead to negative impact across the wider electricity system if the organisation had substantial aggregated ESA load and it was operated irresponsibly.

Government believes a minimum high-level condition on fit and proper persons would be valuable in driving load control licensees to consider the impact of their appointments to senior positions on consumer and electricity system outcomes and would give Ofgem the ability to take recourse against organisations who fail to do so. We do not currently anticipate inclusion of detailed assessments and notification requirements in a load control licence, such as is required as part of the Electricity Supply Licence⁷⁴. We expect that this condition in the load control licence could be supported by guidance specifically for load control licensees around appointing fit and proper persons.

42. Do you agree with the proposal for a condition requiring licensees to have fit and proper senior personnel? Please explain your answer.

⁷⁴ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 19AA in the Electricity Supply Licence (SLC19AA), 'Notification requirements regarding significant commercial/personnel developments', please refer to the Electricity Supply Licence, page 150

Operational capability

We propose a requirement for load control licensees to have the operational capability, control, systems, and processes in place to deliver their service.

It is government's general expectation that robust capability, systems and processes within an organisation will be necessary for continued compliance with the licence and for the delivery of services that benefit consumers and the electricity system. Government considers that operational capability is a reasonable minimum requirement for load control licensees as it directly relates to the organisation's ability to remain compliant with a licence's conditions and deliver their service effectively to their consumers.

Without requirements around operational capability being set for and achieved by load control licensees, there is a risk that organisations do not have the ability or resources to remain compliant with licence conditions and wider legislation. This could deliver a poor experience to consumers; for example, if an organisation is unable to implement the requirements around their complaints process and consumers are unable to get their complaints resolved in a timely manner. Government notes that electricity suppliers, in their role of delivering energy service to end consumers, are subject to requirements around operational capability and these conditions have been an effective mechanism through which to encourage good practice⁷⁵.

43. Do you agree with the proposal for a condition around the operational capability of load control licensees, and how might a load control licence approach this? Please give reasons for your answer.

Financial controls

Financial responsibility principle

We propose a financial responsibility principle be included in the load control licence. We are open to views on how this principle could be approached.

Government believes embedding a general principle focused on financial responsibility in a load control licence from the outset will encourage market participants to develop their businesses responsibly. Though we do not anticipate the insolvency of a load control licensee would have the same level of impact on energy market stability as a supplier exiting the market could, their failure could still have direct impacts on consumers and the wider credibility of demand flexibility. To illustrate, in a market for demand flexibility where licensees aren't operating with regard to financial responsibility, a consumer could find that they face a cycle of multiple demand flexibility services that they contract with failing. This could undermine trust in the market, meaning potential benefits for the electricity system from demand flexibility are not fully realised. The failure of a load control licensee could also risk consumers missing out on money they are owed from the service.

Due to these risks to consumers and sector credibility, government believes it is important for organisations operating within an evolving, developing demand flexibility market to be held to outcome-level standards on financial responsibility – such as sufficient capital to operate responsibly. We are minded to keep requirements around financial responsibility at a high level initially, and we are open on the approach of the requirement and any potential accompanying

⁷⁵ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 4A in the Electricity Supply Licence (SLC4A), 'Operational capability', please refer to the Electricity Supply Licence, page 55

guidance in line with evolving risks as the sector develops, and any demands from licensees for specific direction.

44. Do you agree with the inclusion of a financial responsibility principle in the load control licence and how this might be approached? Please explain your answer.

Insolvency

We propose any insolvency of load control licensees would be addressed as usual under insolvency law. We are open to the development of guidance to encourage consideration of an insolvent licensee's consumers and seek to reduce any risk of the wider electricity system being unduly affected.

If a load control licensee becomes insolvent, consumers would face disruption in their DSR service and there is a further risk that they would not receive the financial benefit associated with the service they may be owed. A load control licensee's insolvency could also impact their customers' use of their ESAs; for example, by reverting them to default settings, meaning they are no longer shifting load to cheaper periods. We expect partial mitigation of this through proposals around interoperability and load control licensees exiting services responsibly – such as the potential 'orderly switching' requirements outlined in the above chapter. However, as a result of a load control licensee's insolvency, their licence may be revoked, meaning that any administrator appointed would not be bound by licence conditions.

Despite these risks outlined, we do not anticipate a need for detailed specialist insolvency processes for load control licensees such as the supplier of last resort or special administration regimes in place for insolvent suppliers. This is because of the anticipated lower economic impact of a load control licensee failing compared to a supplier, and the fact that this will not constitute risk to interruption of a critical service for an end consumer.

Although we do not propose a bespoke insolvency process for load control licensees, we acknowledge that, if consumers have poor experiences when their provider becomes insolvent, there may be an impact on their trust of the market. We welcome stakeholder feedback to this consultation highlighting any potential measures that could be implemented by Government and Ofgem to alleviate these risks.

45. What risks to consumers do you anticipate may arise from the insolvency of load control licensees?

46. Do you agree that specific processes for insolvency of load control licensees are not required? Please explain your answer.

Additional financial controls

Government is open to views on whether any further financial controls may be required in addition to the proposed financial responsibility principle. For example, we have considered whether to include a requirement to inform Ofgem of trade sales and purchases as in a related Electricity Supply Licence condition⁷⁶. This could be relevant information for Ofgem as a change of ownership could impact a licensee's ability to comply with the licence; for example, if the buyer is less financially resilient. At this stage we think that this is unlikely to be a

⁷⁶ 'Licence and licence conditions', <https://www.ofgem.gov.uk/energy-policy-and-regulation/industry-licensing/licences-and-licence-conditions>. For Condition 19AA.1 in the Electricity Supply Licence (SLC19AA.1), 'Notification requirements regarding significant commercial/personnel developments', please refer to the Electricity Supply Licence, page 150

significant risk for the sector, but we remain open to views both on this and any other financial control conditions that could be beneficial to include.

47. Are there any other financial controls that government should consider including in the load control licence?

Costs to businesses

48. For businesses that would be in scope of the licence (as either a DSRSP or Load Controller): Could you set out the additional resource or cost you would incur for complying with the management and financial controls proposals in this chapter?

8. Timelines, implementation and next steps

Context

Across this consultation, government has put forward proposals around who will require a load control licence, requirements for DSRSPs, and the framework and design principles to inform the development of cyber security requirements for Load Controllers. We have also asked for feedback on the potential costs to businesses associated with implementing our proposed policy requirements. We will consider feedback across stakeholders to develop a more detailed impact assessment alongside draft legislation and licence conditions.

We recognise that the demand flexibility market is still in its early stages and that different types of organisations could be at different levels of regulatory maturity. Government intends for the load control licence to underpin a dynamic and growing demand flexibility sector with requirements implemented in a way that is proportionate to risk and takes into account the development of companies across the sector. In this chapter we seek feedback on our proposals on timelines for implementing requirements in the licence. We also discuss potential approaches for phasing and tiering requirements in the licence and discuss Ofgem's regulatory approach for the load control licence.

Timelines

Background

Our prospective timelines for policy interventions across the wider SSES programme are detailed in the overarching Summary Document for this consultation package. In the Spring 2023 response to the SSES Consultation, government outlined its indicative timelines to develop secondary legislation to enable the load control licence in 2024 and to have the licensing regime ready for operation in 2025. Our indicative timelines for the introduction of a load control licence are intended to reflect expectations on uptake of DSR services as households and businesses make the switch to EVs and electric heating, and timelines around wider market developments like market-wide half hourly settlement⁷⁷. Government has slightly amended these timelines from earlier indications to reflect the need to engage stakeholders in detail ahead of consulting on draft legislation and licence conditions, and in response to shifting timelines around wider market developments.

Proposed policy approach and rationale

We expect to consult further on the enabling secondary legislation and proposed licence conditions in early 2025.

⁷⁷ Market-wide Half-Hourly Settlement (MHHS) Programme, 'Planning', <https://www.mhhsprogramme.co.uk/planning> (viewed on 24 February 2024)

Government's policy intent is that, subject to the will of Parliament, Ofgem will have the necessary powers to start the process of assessing applications and awarding load control licences by the end of 2025.

In considering our timelines for developing the licensing regime, we have sought to strike a balance between the interests of organisations in the demand flexibility market who may already have mature practices around consumer protection and cyber security (for example, electricity suppliers) and those organisations currently active in the market who have not yet been regulated through a licence and may therefore need time to develop into full compliance. Considering the needs of different types of organisations is key to our goal of enabling a competitive, thriving demand flexibility sector.

Government intends that, by the end of 2025, subject to the will of Parliament, the necessary secondary legislation will be in place to enable companies to apply for a licence and Ofgem to start the process of assessing applications and issuing licences. We believe the date of this key milestone gives an opportunity for stakeholders to feedback on our policy proposals in this consultation and to feed into the preparation of legislation and licence conditions. This timeline also allows for Ofgem to develop its processes to administer the load control licence alongside its existing duties.

Transition period

Government expects there to be a 'transition period' between when Ofgem can begin to issue licences and conditions of the licence becoming fully effective. We do not have a minded-to position on length of this period pending further engagement with Ofgem, but we welcome stakeholder views on this approach in this consultation.

For a potential transition period, Ofgem would have the power to grant licences but the requirements in the licence would not be legally effective. Organisations would still be allowed to carry out activities specified in the licence without a licence during this period. After the transition period, organisations would be legally prohibited from carrying out specified activities without a licence and would be required to comply fully with relevant conditions of the licence. This transition period could allow Ofgem to fully develop out its processes for administering a new licence and recognises that Ofgem will need time to assess each licence application before the prohibition of activities in the licence are fully in effect.

Government will continue to collaborate closely with Ofgem to understand the delivery considerations of a transition period, and we expect to consult in more detail on this approach in early 2025. We welcome stakeholder feedback on the potential approach of a transition period.

Phasing requirements

We propose that all requirements for all load control licensees are introduced at the same time, but we are open to approaches on phasing the introduction of different measures.

Though we are currently minded not to pursue this approach, government could design the load control licence so that different start dates are put on certain conditions should that be beneficial for the development of the sector, whilst still providing sufficient assurance that consumers and the electricity system are protected. For example, for DSRSPs, the general consumer protection conditions could be introduced first, and more detailed requirements like those around a consumer complaints process and consumer switching procedures could come

later. Government could also introduce requirements for DSR Load Controllers at a later date than DSRSPs to allow for more time for stakeholders to feed into detailed requirements.

49. Do you agree with government's proposal for Ofgem to be able to start the process of assessing licence applications by the end of 2025? Please explain your answer.

50. Do you have views on the length of the 'transition period' between the licence application process opening and the conditions in the licence being effective? Please explain your answer.

51. Do you agree that all requirements in the licence should be introduced at the same time, or should some requirements be phased? If you think requirements should be phased, how should this be approached? Please explain your answer.

Tiering requirements for licensees

Background

In our previous SSES consultation, government committed to considering whether requirements across protecting consumers and the electricity system could be scaled or 'tiered' proportionate to the risk a load control licensee poses, such as the number of customers a licensee has or the amount of load they can control. Government has taken forward consideration of this potential 'tiering' approach – looking at risks to consumers and risks to the electricity system to determine approaches for DSRSPs and Load Controllers respectively.

Proposed policy approach and rationale

We do not expect requirements for DSRSPs in the licence will be tiered or scaled. We expect the same requirements around consumer protections will apply to all DSRSPs regardless of their characteristics, like size of customer base.

Proportionality will be considered in Ofgem's regulatory approach for DSRSPs of varying sizes, in line with its existing regulatory principles - discussed further in the section below.

We think it will be important to maintain a minimum standard of consumer protection across the demand flexibility sector, no matter the characteristics of different DSRSPs. In a situation where there is 'tiering' of consumer protection requirements for different DSRSPs, for example on the size of their customer bases, there is a risk that consumers who have DSRSPs with less requirements could experience worse outcomes compared to those whose DSRSPs are required to have more protections in place. This could create inequity in the market and could disincentivise consumers from entering into arrangements with newer or smaller providers.

Furthermore, in a situation when a consumer is switching between different DSRSPs, government does not want to create a situation where consumers may think they are afforded certain protections for their service since they had them for a previous provider but are not afforded them due to the size of their new provider. This situation could weaken overall consumer confidence in the demand flexibility sector even if the number of consumers affected doesn't represent a large part of the sector.

We have proposed that requirements for Load Controllers around protecting the electricity system will be scaled depending on the amount of load they control.

As opposed to consumer protections, where consumer equity and confidence are key considerations, government believes there is a stronger case for scaling requirements intended to protect the electricity system, given the clearer link between amount of load controlled and risks to infrastructure.

As described in Chapter 3 on the cyber security of Load Controllers, we are minded to create two tailored CAF profiles for DSR: a profile for DSR Load Controllers controlling loads of less than 300MW and a separate profile for Large Load Controllers controlling loads of more than 300MW. We expect these profiles will be supported by industry guidance. The CAF profiles will be based on the minimum cyber security requirements identified for both DSR Load Controllers and Large Load Controllers following the completion of government work with NCSC on this approach in 2024.

52. Do you agree with our proposal that all requirements for DSRSPs in this consultation should apply equally to all relevant organisations irrespective of size? Please explain your answer.

53. Do you agree with the approach on tiering requirements for Load Controllers based on how much load they have the potential to control? Please explain your answer.

Proportionality and Ofgem's regulatory approach

Government and Ofgem are both of the view that the process of applying for a load control licence and demonstrating compliance with conditions in the licence should be easy and accessible for new organisations entering the demand flexibility market. Within the overall structure of a licensing regime, Ofgem has a range of measures in its regulatory 'toolkit' to deter bad practice and promote the interests of consumers amongst its licensees. As with all its regulatory activities, government expects Ofgem will prioritise its interventions around the load control licence in line with its strategic enforcement objectives and, as appropriate, its regulatory principles like proportionality. Ofgem's strategic enforcement objectives and regulatory principles are detailed in its Enforcement Guidelines – with relevant extracts below.

Ofgem's Enforcement Guidelines

Ofgem's [Enforcement Guidelines](#) provide information on the enforcement framework that Ofgem uses when deploying their powers to investigate and, where appropriate, take enforcement action in respect of unacceptable behaviours or conduct. In these guidelines, Ofgem outlines its strategic enforcement objectives and regulatory principles – which help to guide how Ofgem carries out its functions in the interests of energy consumers, where appropriate, promoting effective competition.

Ofgem's strategic enforcement objectives are to:

- deliver credible deterrence across the range of our functions, stamping out bad and sharp practice and ensuring fair treatment for all consumers, especially those in vulnerable situations;

- enable competition and innovation, which drives down prices and results in better quality and new products and services for consumers;
- ensure visible and meaningful consequences for businesses and, when appropriate, company directors, who fail consumers and who do not comply; and
- achieve the greatest positive impact by prioritising enforcement resources and using the full range of our powers and regulatory “toolkit”

Ofgem will, as appropriate, have regard to its regulatory principles, which include proportionality, transparency, accountability. Government believes that consideration of the principle of proportionality will be particularly important for Ofgem as the nascent demand flexibility market continues to evolve. We quote this principle from Ofgem’s Enforcement Guidelines below.

Regulatory principle of proportionality – “We will prioritise our enforcement investigations and actions in cases where the potential breach, if confirmed, is serious (our assessment will include harm to consumers/competition and our ability to regulate), and/or where there is a need to address contravening behaviours or conduct in the energy market and send a deterrent signal to the market. We will not normally prioritise enforcement action for isolated issues affecting small numbers of consumers, unless any harm they have suffered is significant. We will generally focus on systemic weaknesses, including where those weaknesses adversely affect groups of consumers such as those in vulnerable situations.”⁷⁸.

Using external standards to evidence compliance with the licence

A potential approach under consideration by government is that those applying for a licence could evidence compliance with certain licence conditions by showing compliance with recognised external standards. As part of the wider licence regime, government could allow for the development of a process for recognising standards developed by external stakeholders. For example, by assessing how the standards align with the policy requirements proposed in this consultation and whether the standards have adequate assurance processes in place.

Government welcomes the development of voluntary codes and standards around demand flexibility services by industry stakeholders – for example the HOMEflex Code of Conduct developed by Flex Assure in partnership with Scottish and Southern Electricity Networks⁷⁹. Ahead of a licence regime being in effect, government believes such standards have a valuable role to play in promoting good practice in the sector and welcomes the development of further standards.

54. What role do you think external standards have to play in demonstrating compliance with the load control licence, particularly measures for DSRSPs? Please explain your answer.

⁷⁸ Ofgem, ‘The Enforcement Guidelines’ (2023), <https://www.ofgem.gov.uk/publications/enforcement-guidelines> (viewed on 24 February 2024)

⁷⁹ ‘HOMEflex Code of Conduct – Version 1.0’ (2023), <https://www.flexassure.org/homeflex>

Interactions with the supply licence

Government proposes that electricity suppliers already carrying out load control activities alongside their supply activities will need to apply for a load control licence.

Many of the proposed requirements for load control licensees, especially for consumer protection, reflect the good practices already required from licenced electricity suppliers. For example, our proposed requirements for treating consumers fairly builds directly on the existing requirements for suppliers in SLC0, as do our proposals for the shape of the consumer complaints process for load control consumer services.

Though government proposes separate licences for supply and load control activities, we acknowledge that, for many suppliers, their 'load control' services and 'energy supply' services will be closely interlinked. Nevertheless, we propose that suppliers should hold both licences. We do believe that load control is a distinct economic activity from energy supply and should be defined as such in legislation. We also believe that, at times, suppliers may want to offer their load control services (whether as a DSRSP or a Load Controller) to other suppliers' customers. In these instances, we believe such customers should be offered the same legal protections for load control services as others – suppliers holding load control licences will address this scenario.

Throughout 2024, government will be working with Ofgem to further understand the interactions between the supply licence and the future load control licence. Government expects that Ofgem will be developing its reporting processes for relevant conditions in the load control licence with regard to similar conditions in the supply licence.

55. Do you agree with the proposal for electricity suppliers to hold a separate load control licence? Please explain your answer.

Cost Recovery

Government intends that, in-line with other competitive licences in the energy sector, (for example, for supply and generation) costs associated with Ofgem's resource for regulating the load control licence would be recovered through a mix of fees for load control licensees themselves and Ofgem's general levy on other licensees (such as network operators and owners).

As part of this consultation package, we have asked stakeholders of the expected costs associated with compliance with the proposed requirements in the load control licence. Using this feedback and further stakeholder engagement, we will be able to further understand the costs to businesses, especially small businesses, associated with the new licence. We will also seek to further understand how many businesses intend to apply for a licence. Understanding the costs to businesses and the expected number of businesses in scope of the licence will allow government and Ofgem to make a better judgement on how to distribute the costs across charges on load control licensees and other, more mature, licensees in the energy sector – such as network operators and owners.

56. Do you agree with the proposed approach for recovering the costs of administering a licensing regime? Please explain your answer.

Next steps

1. Consider consultation responses and stakeholder engagement

This consultation will be open until 11 June 2024. Alongside considering written replies to this consultation, government and Ofgem will seek to establish the appropriate forums for industry representatives, consumer representatives and other key stakeholders to discuss our policy approach for consumer protections in the licence in closer detail.

2. Deepen understanding of the benefits and costs of a load control licence to inform an impact assessment

In developing our proposals, we have weighed up the likely costs to businesses associated with compliance with proposed requirements with the benefits that new protections would bring to consumers, the electricity system, wider society and business growth from these protections. We have also asked throughout this consultation questions for businesses on the likely resource or cost associated with aligning with the proposed requirements in the licence. Government is keen to hear further from businesses, particular smaller organisations who believe they will be in scope of the licence, on the implications of this licence will have for them. We will also continue to engage with consumer representatives, like Citizens Advice and wider stakeholders to understand how the licence will deliver positive outcomes for consumers. Before laying legislation before Parliament, we will be undertaking a detailed Impact Assessment of introducing this new load control licence.

3. Develop detailed cyber security and technical requirements for Load Controllers

Government is progressing work to create the right technical, security and assurance framework which will enable us to determine the most suitable security requirements and controls and determine tiers or thresholds where any such controls apply. Officials will work with NCSC to determine appropriate profiles for Load Controllers. We will engage industry via the Security Working Group on initial content of the CAF profiles to inform our thinking before Summer 2024. Government will consult on completed draft profiles by early 2025.

4. Develop draft legislation and licence conditions for load control licensees and consult on conditions

As laid out above and in our wider Summary Document for this consultation package, and earlier in this consultation we expect to consult in further detail on requirements for licensees in early 2025.

An indicative timeline of key next steps can be found below.

Table 2. Indicative timeline for the development and implementation of a load control licence.

<i>Proposed/Indicative timeline</i>	2024		2025		2026	2027	2028
Introducing a licensing regime	Details of proposals consulted on	Develop licensing approach and conditions	Regulatory framework and licence conditions consulted on	Licensing regulation put in effect	Window for applications and obligations to become operational	<i>Window for potential further changes to licence to be made reflecting implementation of other products</i>	

Consultation questions

- 1. Do you agree that activities of DSRSPs should require a load control licence? Please explain your answer.**
- 2. Do you agree that activities of DSR Load Controllers should require a load control licence? Please explain your answer.**
- 3. Do you agree that activities of Large Load Controllers should require a load control licence? Please explain your answer.**
- 4. Do you think there should be any further activities that should require a load control licence? Please explain your answer, and expand on any further activities where relevant.**
- 5. Do you agree with government's proposal to limit the scope of the licence to certain ESAs for each activity proposed in this chapter? Please explain your answer.**
- 6. Do you agree with government's proposal to limit the scope of some of the activities in the licence (consumer contracting for load control and load control below 300MW) to load control for the purposes of DSR? Please explain your answer.**
- 7. Do you agree with Government's proposal for protections around DSR in this licence to cover small non-domestic consumers? Please explain your answer.**
- 8. Do you think the scope of DSR protections in the load control licence should extend to larger non-domestic consumers too? Please explain your answer.**
- 9. Do you agree with Government's proposal for licensees to only be responsible for compliance with particular conditions in the licence related to the activity or activities they carry out? Please explain your answer.**
- 10. Do you agree with the four assurance principles? If not, please explain your answer.**
- 11. Do you agree that two tailored CAF profiles, one for DSR Load Controllers and a separate profile for Large Load Controllers, is the right approach to organisational assurance for assessing licensed Load Controllers? Please explain your answer.**
- 12. Do you agree with requiring DSRSPs through the load control licence to meet a general condition to treat consumers fairly? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.**
- 13. Do you agree with the proposal to use Standards of Conduct within a general consumer protection principle of fairness to impose requirements for communications about products and services? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.**
- 14. Do you agree with the proposal to include a licence condition that instructs DSRSPs to only recommend services that are appropriate to the individual consumer's characteristics and preferences? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.**

- 15. Would guidance for DSRSPs regarding appropriate services for different types of consumers be beneficial?**
- 16. Do you agree with the proposal to use the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 as a basis for requirements for complaints processes for DSRSPs? Please explain your answer.**
- 17. Are there any requirements within the 2008 Regulations that you consider to be inappropriate to apply to DSRSPs?**
- 18. Do you agree with the proposal that the licence should require DSRSPs to participate in an ADR scheme? Please explain your answer.**
- 19. Do you think there should be a single common ADR scheme across DSRSPs? Please explain your answer.**
- 20. Do you think government should extend consumer advocacy and advice services to cover issues related to DSR load control? If so, what particular services do you think would be useful for DSR consumers? Please give reasons for your answer.**
- 21. Do you agree with the proposal to use the definition of vulnerable situations used in the Electricity Supply Licence? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.**
- 22. Do you agree with the proposal that DSRSPs should seek to identify and maintain their own records of consumers in vulnerable situations? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.**
- 23. Do you think DSRSPs should be required to deliver the priority services defined in SLC 26.5 (a), (b) and (e), and/or any other priority services in the Electricity Supply Licence?**
- 24. Do you agree with the position that the Equality Act 2010 provides sufficient protection regarding inclusivity and accessibility of the design of DSR processes and services? Please give reasons for your answer and, where relevant, include reference to alternative or additional options.**
- 25. Do you agree with our proposal around requiring DSRSPs, in the scenario that they offer an interface to consumers to manage their service, to offer the option for the consumer to request cancellation of load control of their ESA? Please explain your answer.**
- 26. Do you think any further guidance or requirements related to the consumer's ability to request cancellation of a remote load control action through a DSRSP could be warranted now or in the future? Please explain your answer, making reference to the potential requirements outlined in the consultation as well as any further requirements not discussed.**
- 27. Does the proposed package of consumer protection measures offer sufficient protections to consumers while also enabling DSRSPs to develop innovative service offerings? Please explain your answer.**

28. How do you anticipate that the proposed package of consumer protection measures will impact new entrants to the market, and do you expect that any mitigation is required to reduce barriers to entry?

29. Should government include any further requirements to protect consumers in the load control licence not covered in this chapter? Please reference specific requirements where appropriate.

30. For businesses in scope of the licence: Which resources (FTE) or costs (£) are you currently using to deliver consumer protection measures?

31. For businesses in scope of the licence: Which resources (FTE) or costs (£) would you have to use to comply with the consumer protection requirements set out in this chapter (ideally broken down by topic)?

32. Do you agree with government's proposal to include a requirement in the licence requiring DSRSPs to allow consumers to exit a service? Please give reasons for your answer.

33. Do you agree with government's proposal for a condition that fees associated with a consumer's service exit should be proportionate, and if so, do you have a preference as to how 'proportionate' is defined? Please explain your answer.

34. Do you think any further requirements around service exit need to be included in the licence, for example around the visibility of exit fees at the consumer contract? Please give reasons for your answer.

35. Do you think there should be requirements for DSRSPs to enable orderly switching of ESAs between services? What specific measures do you think might need to be covered as part of these requirements – including those referenced in this consultation? Please give reasons for your answer.

36. For businesses in scope of the licence: Could you set out the additional resource or cost you would incur for complying with requirements around consumer switching laid out in this chapter?

37. Do you agree with our proposal for no further legal requirements on load control licensees around data privacy at this time? Please explain your answer.

38. Are there specific risks to consumers associated with the processing of personal data as part of load control services not addressed by the UK's data protection framework? Please explain your answer, referencing specific evidence where relevant.

39. Would specific requirements around the protection of personal data from load control services significantly improve consumer confidence in the sector? Please explain your answer, referencing specific evidence where relevant.

40. In the instance that a load control licensee has produced an assessment of its processing activities, do you think this assessment should be pro-actively shared with Ofgem? Please explain your answer.

41. Would the creation of sector-specific guidance, like an ICO-approved UK-GDPR code of conduct, be beneficial for consumers and load control licensees? Please explain your answer.

42. Do you agree with the proposal for a condition requiring licensees to have fit and proper senior personnel? Please explain your answer.

43. Do you agree with the proposal for a condition around the operational capability of load control licensees, and how might a load control licence approach this? Please give reasons for your answer.

44. Do you agree with the inclusion of a financial responsibility principle in the load control licence and how might this be approached? Please explain your answer.

45. What risks to consumers do you anticipate may arise from the insolvency of load control licensees?

46. Do you agree that specific processes for insolvency of load control licensees are not required? Please explain your answer.

47. Are there any other financial controls that government should consider including in the load control licence?

48. For businesses that would be in scope of the licence (as either a DSRSP or Load Controller): Could you set out the additional resource or cost you would incur for complying with the management and financial controls proposals in this chapter?

49. Do you agree with government's proposal for Ofgem to be able to start the process of assessing licence applications by the end of 2025? Please explain your answer.

50. Do you have views on the length of the 'transition period' between the licence application process opening and the conditions in the licence being effective? Please explain your answer.

51. Do you agree that all requirements in the licence should be introduced at the same time, or should some requirements be phased? If you think requirements should be phased, how should this be approached? Please explain your answer.

52. Do you agree with our proposal that all requirements for DSRSPs in this consultation should apply equally to all relevant organisations irrespective of size? Please explain your answer.

53. Do you agree with the approach on tiering requirements for Load Controllers based on how much load they have the potential to control? Please explain your answer.

54. What role do you think external standards have to play in demonstrating compliance with the load control licence, particularly measures for DSRSPs? Please explain your answer.

55. Do you agree with the proposal for electricity suppliers to hold a separate load control licence? Please explain your answer.

56. Do you agree with the proposed approach for recovering the costs of administering a licensing regime? Please explain your answer.

This consultation is available from: www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-implementation

If you need a version of this document in a more accessible format, please email alt.formats@energysecurity.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.