

Energy UK response to DESNZ Smart Secure Electricity Systems Programme: Section 2: Licencing Regime

21.06.2024

Executive Summary

Energy UK is the trade association for the energy industry with over 100 members - from established FTSE 100 companies right through to new, growing suppliers, generators and service providers across energy, transport, heat and technology.

Our members deliver nearly 80% of the UK's power generation and over 95% of the energy supply for 28 million UK homes as well as businesses.

The sector invests £13bn annually and delivers nearly £30bn in gross value - on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors. The energy industry is key to delivering growth and plans to invest £100bn over the course of this decade in new energy sources.

The energy sector supports 700,000 jobs in every corner of the country. Energy UK plays a key role in ensuring we attract and retain a diverse workforce. In addition to our Young Energy Professionals Forum, which has over 2,000 members representing over 350 organisations, we are a founding member of TIDE, an industry-wide taskforce to tackle Inclusion and Diversity across energy.

Overview

Energy UK supports a high level of customer service and support from demand flexibility services to deliver positive engagement with the developing flexibility market. It is also important to recognise the value of fostering innovation in the market, and to seek to ensure that access to the early-stage market is fair.

Energy UK notes a divergence of opinions among its members regarding the licensing proposal, with the overarching, differing viewpoints as follows:

- Some members favour a strong protection framework for customers, regardless of the provider or service type, from day one. Their view is that existing consumer law and voluntary codes of conduct do not provide sufficient protection for consumers in the DSR market. Any scope for DSRSP actions to negatively impact a customer's energy service means that adequate protections for the customer and the supplier are required, and as such a licence would be welcome to these members.
- Other members believe that to facilitate access to the market on reasonable terms at this early stage, DSRSPs could, be less rigorously regulated as these services do not represent an essential service in the way that energy supply does. Over-regulation could dissuade entry into the market and limit scope for innovation.
- Members agree that, if it is decided that a licence is required, further clarity is needed as to how the two licences will interact, for example where a supplier is offering DSR services to their own supply customers. We would welcome clarity as to whether suppliers may be penalised under separate requirements in a 'double jeopardy' case

where they are operating under two separate licences for the provision of the same service or contract to the consumer.

- Nuance is needed in regards to the proposed 300MW threshold: different ESAs will pose different challenges and offer different outcomes within a 300MW threshold, and therefore we would welcome clarity on how this will be defined. Nationally, 300MW can cause blackouts, but on a local level a much smaller amount could impact the network. DESNZ should liaise with network operators to better understand the potential impact of the threshold on lower voltage networks, and with DSRSPs to understand the likely outcomes of any given quantity of aggregated ESAs of different types.
- Energy UK members have also submitted responses with additional detail relevant to their specific business models and technical approach.

If you have any questions about this response or wish to engage with Energy UK and its members, we would welcome further engagement.

Kind regards,

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Consultation Questions

Activities Requiring a Load Licence

1. Do you agree that activities of DSRSPs should require a load control licence? Please explain your answer.

Broadly agree, and it would be sensible to align any new functions with recognised and policy which is already successfully in place, although we note some of the challenges in getting this process right in question 2.

There are concerns that DSRSPs and suppliers already have their own set of regulations in place, and may be penalised over the need for a separate control licence. Such a licence requirement will have to be considered in terms of ensuring it does not create imbalances in requirements for different types of DSRSPs, including suppliers operating as DSRSPs. This licencing process would need to be reviewed with Ofgem.

Questions have been raised about autonomous devices, as there are no specifications about these in the consultation document. This raises concerns for certain battery types.

Behavioural and manual flexibility should also be in scope of the licence, for example ESO's Demand Side Flexibility service.

2. Do you agree that activities of DSR Load Controllers should require a load control licence? Please explain your answer.

Across Energy UK membership, members hold differing views on the extent of a licence requirement for load controllers. Members acknowledge the benefits of a licence, particularly around ensuring that there is consistency across the market, but some members note concerns around the potential impact on the nascent market of a stringent load control licence. There is a further risk that all manufacturers of ESAs and all energy retail companies would need to apply for a licence, as many of their current activities could count within the definition of load control.

If a load control licence is introduced, Energy UK would raise the following considerations and conditions for its introduction:

- Primarily, it's important to note the difficult distinction between energy suppliers, load controllers, and manufacturers, including where these are the same organisation. Whatever the outcome, we urge government to consider the outcomes for new market entrants, given the technological innovation and cost efficiencies that robust competitive markets can deliver, both critically needed in the transition to Net Zero.
- Definitions of categories within the licence may also be required, to define which actors are counted as large or small, and when the licence requirement begins to take effect based on a specific activity or specific load capacity controlled by the prospective actor. Details of the definitions of remote or direct load control, for example, would be welcome in defining when a licence is required.
- The cyber security framework is a predominant part of any licence requirements. Energy UK supports the thinking behind this proposal, but members have raised questions as to whether a licence is the right approach. Achieving cybersecurity is an important part of

the future energy system, but there may be alternative mechanisms which may be more appropriate in delivering this, such as through certification.

- We would ask for further clarity as to how the two licences will interact, for example where a supplier is offering DSR services to their own supply customers. We would welcome clarity as to whether suppliers may be penalised under separate requirements in a 'double jeopardy' case where they operating under two separate licences for the provision of the same service or contract to the consumer.

Energy UK's support for a gradual move toward a more stringent regulation and the development of a licence is also subject to the outcomes of section one of this consultation, and, therefore, ask for clarification on the following points to make an informed decision:

- What an ESA for DSR purposes is defined as. In section 1, under the Smart Mandate, Energy UK supports the Smart Mandate gradually including every ESA type in equal manner.
- Whether load is controlled remotely vs locally. This would affect whether a third party can control a device via an API, which in turn would be affected by the PAS 1878 standard outcomes outlined in section 1. There is an overarching need for clear guidance and definitions to be set out ahead of and throughout any development and application of a licence for load control.

3. Do you agree that activities of Large Load Controllers should require a load control licence? Please explain your answer.

Energy UK broadly agrees with the principles of the licence, but this is dependent on the conditions of the licence.

The logic of the 300 MW threshold for large load controllers is clear, but different ESAs will pose different challenges within the 300MW threshold, and therefore we would welcome clarity on how this will be defined. For example, EVs typically charge for only 5% of the time, and for operators with multiple EV chargers under management they have over 300MW of aggregate load, but in practical flexibility capacity terms this is not operational for much of the time. It's more likely that heating/cooling devices will pose more inherent risk to LV networks based on typical usage. There is a further risk of the threshold being too low to support innovation.

Adding more nuance in the 300MW threshold could resolve these challenges. Nationally, 300MW can cause blackouts, but on a local level a much smaller amount could cause damage to the network. To align this view, DESNZ should liaise with network operators to better understand the potential impacts of the threshold, as the extent of damage that the threshold can cause will vary across network areas and network operators based on their capacity and resilience. DESNZ should look to deliver additional engagement with DNOs to help manage and understand the risks apparent, and more engagement with load controllers to understand typical behaviours and limitations of differing technologies.

It remains unclear if the licensing process is the best way to deal with these differing risks. For example, as licencing will give customers more protection, it may be the obligations should be focussed on parties that are consumer facing only.

Energy UK members also note the need to clarify whether the 300MW is de-rated, with further clarification needed.

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.

Licensing should be focused on customer protections where these are clearly evidenced to be needed, and on cybersecurity. Further activities may emerge as the market develops, and as such DESNZ will need to ensure there is sufficient flexibility in the approach to enable further changes to any licence based on innovation and market trends.

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.

Energy UK would welcome consideration of how the licence could cover broader appliances. For example, white goods could in the future have the potential to provide load control, and therefore the licence should cover these. If, in the future, an appliance such as a fridge would be sold as an energy smart appliance, DESNZ should consider how they would come under the restrictions.

Consideration of how behavioural flexibility (changing the time and type of usage) should be included in the approach would be welcome, not just automated flexibility via automated ESAs, else there could be a gap in consumer protections between consumer types.

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.

Energy UK agrees in principle, although with the following comments.

The proposal also depends on the product in scope. For example, for electric vehicles, some of the remote commands are not in relation to DSR services. Load control for non-DSR reasons are lower risk than activities for active DSR management (e.g. remote chargepoint control, software/firmware updates etc). Additionally, not all the commands an EV is capable of will need full protection. In these examples, the scope of the licence may not be warranted, particularly if the activities are deemed lower risk.

As detailed in question 3, more clarity is needed regarding whether 300MW is the right level.

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.

Energy UK believes that small non-domestic consumers need the same level of protection as domestic consumers.

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.

Energy UK believes at this stage protections should be focused on domestic and small non-domestic, but protections for larger non-domestic consumers should be considered at a later stage.

These protections could be aligned with schemes like Flex Assure, the voluntary scheme where participating Flexibility Services Providers agree to work with customers in an honest and transparent manner, providing evidence of product benefits and fair contracts.

It should, however, be noted that there is only one participating in the voluntary scheme currently, which illustrates the challenge of voluntary measures.

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.

Broadly speaking, Energy UK agrees that licensees should only be licensed for the activities you do, with assurance a licensee meets the criteria. However, this could be interpreted in different ways, so further clarity about how the relationships interact would be welcome.

Energy UK would also raise a more general point about the need for coherence between Sections 1 and 2, particularly around some of the interoperability considerations that aggregators would need to consider. Energy UK would urge the outcomes of the consultation to be considered in tandem.

2. Assuring the Cyber Security of Load Controllers

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

Energy UK supports outcome-based requirements for cybersecurity, such as those that underpin the Cyber Assessment Framework (CAF) as an effective way to mitigate risks whilst allowing a diverse range of technologies and actors.

However, industry urges Government to ensure that the implementation of the CAF framework onto this market remains flexible given the nascency of the sector. Above all, Energy UK would stress use of internationally aligned standards. The discussed ETSI EN 303 645 is one example which can be expanded through the standards IEC 62443 2-1, 3-3 and 4-2. New standards should be aligned with wider European standards as cyber-security for decentralised assets has already been discussed and regulated in many regions.

Implementation should recognise that as a new framework to comply with, certain organisations will find it harder to comply than DNOs and suppliers.

Regardless of the type of assurance agreed, Energy UK believes the key point is that assurance is mandated to ensure market-wide participation. An optional requirement on assurance could lead to inconsistent standards and costs falling on some industry participants and not others, compromising fairness.

Government should consider where this sits best in regulation, i.e. Ofgem, OPSS or other.

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.

Energy UK broadly agrees, providing the foundational security requirements for CAF will create certainty and ease for suppliers and manufacturers, whilst guaranteeing a level of security for the energy system. There should also be other mechanisms that are needed as a preventative measure, rather than the singular threshold.

3. Consumer Protection

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.

As mentioned above, there remains divergence of opinion in Energy UK's membership.

Some members note that while energy, heating, and transport are necessary for all consumers, load management is not a universal service and, as such, the conditions applied to DSRSPs, particularly at this early stage for the market, should not be so stringent that they reduce the level of competition in the market. The intention should be to gradually align conditions on DSRSPs with those for the rest of the energy retail market, but applying all of these conditions may not be appropriate at this time and could discourage the innovation and investment needed to get to Net Zero.

However, other members note that it is vital that consumers are offered the same protections irrespective of who their service provider is from day one.

Energy UK recognises the need to ensure that consumers are protected as activity in this space increases, both to protect individual consumers and to protect the wider market from the impacts of negative customer outcomes.

However, Energy UK would welcome further analysis as to the extent of protections provided through existing consumer law. An example of a risk that may not be sufficiently covered by consumer law is the requirement for DSRSP to take reasonable steps to ensure that the action taken benefits the consumer. In a scenario where consumers participate in a 'turn up' event, the cost of the additional energy consumed might be outweighed by the flexibility revenue.

Consumer law wouldn't be sufficient in this instance if supplier is different from the aggregator, but the customer should be expected to understand the complexity. We would welcome further engagement from Government to outline any areas outside of the consumer protection law which could provide necessary protection.

Energy UK would point to the ongoing development of the HOMEflex project, as standards in this space should be aligned to avoid two sets of requirements being developed in tandem. Above all, Energy UK would also strongly encourage flexibility in timelines to align with implementation timelines of wider European and global standards.

Whatever the outcome of the proposal, we would urge Government to ensure conditions are consistently applied to ensure fairness across the market, for suppliers and DSRSP equally.

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.

The standards should mirror supplier licensing requirements so as to not create two sets of requirements.

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.

Energy UK supports the intention to ensure consumers are able to make clear and informed decisions based on the information provided.

Energy UK supports the need for DSRSPs to provide upfront and relevant information. However, it may be difficult to discern what is 'recommended' and what is 'appropriate', as this may vary by situation.

15. Would guidance for DSRSPs regarding appropriate services for different types of consumers be beneficial?

Broadly agree, although Energy UK notes member concerns that guidance can be used as an alternative to formal regulation. Wherever possible, requirements should be set out in the actual regulation rather than in guidance and should be subject to the appropriate change processes.

Guidance should be aligned with guidance provided with the supply licence for ease.

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.

Energy UK broadly agrees with this proposal.

If it is decided that a licence is needed, the complaints process should be aligned with the supply complaints process to simplify consumer participation.

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

Energy UK broadly agrees.

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

Broadly agree.

For more detail, please refer to question 19 and 16. Our view would be to have a goal of simplifying the complaints process to avoid consumer confusion.

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

It may be that an ADR is not needed for DSR services at this stage.

If it is decided that an ADR is needed through a cost-benefit analysis, the scheme should mirror the complaints management process in the supply licence, and it needs to be a single, common scheme. The framework should be as simple as possible given that consumers

have little awareness of how an ADR service works. The ADR should also be competitive, providing a good value service and driving up standards through the ADR provider. This can be done by retendering the ADR provider, and monitoring the outcomes of the service. An ADR could be helpful to mitigate consumers contacting their suppliers to discuss complaints about any app-based aggregators, with suppliers required to be contactable whereas there is no such requirement for other players.

At the bottom of P46, DESNZ state that “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. 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 providers would be required to meet defined minimum criteria” .

We note that this would apply solely to domestic consumers, and would note that it may be worth extending to non-domestic ADR schemes as well. This would go some way to stamping out the inconsistent outcomes members are starting to see with multiple ADRs surfacing in the TPI space, which is a concern in and of itself.

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.

Agree – more support and advocacy will protect consumers, particularly for emerging, market-wide technologies where consumers may be unaware of how they work and what support is available to them.

If there was an expansion of a remit for consumer advocacy, it would require expansion of levy funding to facilitate the costs. An annual cost for a consumer for the use of a service like Citizens Advice is [7p per household](#), but on average saves or recovers £1500 per client. It’s estimated that 4 in 5 customer problems across energy, post, and general consumer are solved by speaking with the CA. A neutral body such as CA to cover consumer advocacy, particularly in a new market framework which could be difficult for consumers to understand, could be particularly beneficial.

We would also make the broader point that it’s important that Government keep optionality in use of communication networks open. There are specific consumer segments for which load control via the smart metering network is the most immediately viable route considering cost of appliance, particularly in social housing where the change of tenancy is high.

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.

Agree

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.

Agree - to ensure vulnerable customers are not left behind in the transition towards smart technology, and that the existing approach to identifying and sharing data on customers in vulnerable circumstances is reflected in the approach. It is vital that the specific needs of consumers in vulnerable situations are taken into account by DSRSPs, not only when undertaking DSR local control services but in all aspects of customer service including communication. This will ensure vulnerability is identified and accounted for by DSRSPs, ensuring consumer protection.

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.

Energy UK agrees with this position, although this may need greater attention as accessibility requirements become more obvious as smart technologies are more commonly taken up.

Energy UK agrees that the Government will need to be open in reflecting on how it can best support disabled consumers with the influx of new technologies.

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.

The proposed approach seems sensible, although some technical challenges may need to be addressed before this is mandated.

Energy UK would welcome further clarification on what the contractual ramifications would be, as last minute calls to contractual arrangements could reduce customer benefits in a certain service. This guidance will also be particularly important for rental properties, where tenant changeover is common. Guidance and protocol should also address potential impacts on incoming tenants if the outgoing tenants have not cancelled their contracts.

It will also be costly for a customer to override a request, which is particularly true for EVs. Energy UK would also look for further understanding on what the consequences would be for customers overriding their services. We would therefore welcome greater guidance and clarity on what exit fees would look like and how customers could recover costs.

It may be that the challenges above are covered consumer protection law, which will be bolstered by the new DMCC Act which mandates straightforward contract cancellation contract. We would welcome review as to whether this is in fact the case to avoid 'doubling up' or requirements.

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.

We will raise the importance of considering cost implications and guidance for overriding remote load control, and the effect on both the DSRSP and the consumer.

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.

At this stage, yes.

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?

Consumer protection should be at the heart of any new energy-related technology rollout, to mitigate some of the cost of living and energy crises the market has faced while ensuring all consumers can take advantage of the benefits of the transition.

It is critical that any new requirements are delivered on the basis of evidence of where there is a clear and defined gap in existing protections, as much of the existing protections for consumers are sufficient. However, there are clear gaps in the level of clarity and understanding in how and where these protections should apply.

To ensure there are limited barriers to market entry, the Government should make sure regulations are clear and simple, with guidance and support to help businesses (particularly smaller, newer businesses) comply with the requirements.

Transitional periods may also be helpful to allow new entrants time to adapt to the new regulatory environment. As in our response to Section 1, greater clarity on what a 'grace period' looks like will support businesses transitioning into the market.

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.

Manual and behavioural load should be considered.

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)?

4. Consumer Switching

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.

As above, the Digital Markets, Competition and Consumers Act of 2024 ensures market competition and provides consumer rights for connected purposes, and we would point to this act to avoid doubling up of standards.

If this is not chosen as a method of consumer protection, Energy UK agrees broadly that the Government's proposal to include requirements to allow consumers to exit a service while allowing the DSRSP to recover costs proportionate to the contract arrangements. For consumers, the process of changing service provider (and/or electricity supplier) should be simple, transparent and, where possible, without the need for a physical site visit to replace or adjust any ESA supply equipment installed. This will help DSRSPs ensure they are providing a worthwhile, competitive service for customers while enabling competition to thrive.

Also, where possible, the switching process should not be reliant on the outgoing DSRSP to be successful. For example, it should not be necessary for the outgoing DSRSP to surrender control of devices before the incoming DSRSP can operate them.

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.

Energy UK supports the Government's proposal to 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.

By mandating the visibility of exit fees, regulators can promote competition in the market. When consumers can easily compare the total cost of services, including exit fees, they are more likely to switch providers if they find better value elsewhere. This incentivises service providers to offer competitive pricing and quality services to retain customers, fostering a competitive market.

This will also ensure consumers are making informed decisions about the new, often complicated, smart technologies.

However, amongst this, there should be consideration on how equipment installers will be able to recover costs.

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.

Transparency and clarity needs to be at the forefront for any exit fee to allow customers to make a well informed decision on any costs that they will be faced with. This will be

particularly important for rental properties, where tenancy changeover is high, and guidance will be needed to clarify who will be responsible for the costs (e.g. tenant or landlord).

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.

Energy UK agrees that the standard should be based on PAS 1878 for ease and efficiency with no other suitable alternative at present. However, we strongly urge government to appropriately engage with industry on the following considerations, before which, PAS 1878 is not fit for purpose.

In 2022, Energy UK set out its views on PAS 1878, which are relevant considerations when switching services. Regarding PAS 1878 itself, overall the standard was principally designed within the context of smart EV charging, which foremost represents larger blocks of predictable load, and therefore at present is not best aligned to equal operation of other ESAs such as heat pumps. Without cross-ESA understanding, ultimately the standards will deliver sub-optimal value to consumers.

Similarly, the ESA consumption forecasts are assumed to be discrete as they do not enable a combined ESA forecast, e.g. combined EV and heat pump profile to be offered.

The standard also does not directly address, and is therefore unclear on, how a Customer Energy Manager (CEM) may enable cross asset optimisation, whilst the main focus of the standards is on assuming most of the intelligence resides at device (ESA) level. Areas which require greater clarity within PAS 1878 itself include its certification process and registration of firmware. Likewise, reporting requirements for flexible response are unclear - in guaranteeing actions were not coincidental - and standards introduce long tail commitments which are onerous, e.g. the commitment to provide software updates for devices over a 15-year asset life.

Under PAS 1878 the CEM cannot assign weighting to DSRSP offers, e.g. decide whether it is better to opt in to a DSRSP offer or respond to a ToU tariff signal, nor can the DSRSP communicate the specifics of the problem it is trying to solve.

Finally, for PAS-based standards to remain effective, there must be an appropriately fast and cost-efficient mechanism by which they can evolve. We note the BSI's Flex Standards model for consideration which enables ongoing changes and dynamic consensus which allows standards to better keep pace with tech developments.

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?

5. Data Privacy

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.

Greater clarity is needed on whether the requirements in PAS 1878 will be mandated. Whilst Energy UK agrees with proposed data privacy outcomes for ESAs, Government should focus consideration on future data privacy requirements that are not already featured in UK GDPR to avoid confusion, overlap / duplication, and any possible contradictions. Focus should centre on where additional protection is required beyond UK GDPR, for instance on sensitive data related to consumer consumption habits and preferences which can theoretically be used to identify an individual and their location.

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.

As outlined, the Government should closely work with Ofgem's workstream on Data Sharing in a Digital Future to coordinate the data privacy risks associated with new energy technologies.

We urge the Government to follow lessons learnt from the smart meter rollout in that public-based messaging around data and permissions must be carefully crafted to avoid negative media sentiment that could result in consumers being discouraged from sharing energy consumption information that is essential to generate the greatest benefits for all consumers and the overall system.

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.

Government should carry out a risk assessment relating to load control data, and ensure that the data requirements are in line (if not kept the same) as the widely accepted GDPR standards.

Clear guidelines and regulations regarding the protection of personal data can enhance trust and transparency between consumers and load control service providers. When consumers are confident that their data is being handled securely and ethically, they are more likely to engage with load control services and share the necessary information for optimal energy management.

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.

Energy UK supports Ofgem having the ability to request organisations' assessments of their data processing.

There is a risk that this would become administratively burdensome – resourcing and simplicity must be considered.

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.

Agree – it would help to simplify the complexity of the requirements for businesses. However, any such guidance must not be too prescriptive and should allow licensees to design their own processes and follow their existing compliance framework, rather than creating additional bureaucracy.

6. Management and Financial Controls

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

There are differing views amongst our membership:

Some members do not believe there is sufficient rationale for a significant condition at this stage. In a competitive market, organisations will resolve this independently. This would be a welcome principle in the licence, however, as long as the implementation requirement is open to different approaches.

Conversely, energy suppliers who will want to provide DSR services to their customers are already required to have 'fit and proper' senior personnel, therefore it may be appropriate that those they are competing with meet the same requirements to ensure fairness for those operating in the market. The risk would likely be to emerging markets if there aren't sufficient processes in place to manage issues with new operators.

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.

Similarly, as above, we have differing views amongst our membership.

Some members don't believe there is sufficient rationale for a significant condition at this stage. Organisations will resolve this independently if the market is competitive. The market will also operate as necessary in this capacity, ensuring that organisations with the best capacity will ultimately deliver the best service. This would be a welcome principle in the licence, however, as long as the implementation requirement is open to different approaches.

However, others disagree on the basis that there needs to be level playing field for suppliers. Similarly to Q42, the risk would likely be to emerging markets, where customers are accessing an unfamiliar service and to provider reputation if there isn't sufficient customer service to manage issues with new operators.

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.

Energy UK agrees with the intention to include a principle on financial responsibility. Implementation and governance of this principle will have to be considered in more detail to be effective in practice. Energy UK believes that with the correct technical requirements in place, such as strong cybersecurity, data privacy, and consumer protection, consumers will feel adequately protected.

Organisations wishing to provide the best service may provide additional actions to ensure financial responsibility of their own accord, ultimately providing better service for consumers. This standard may be best to implement in further detail once the market has matured.

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

During insolvency cases, provided that the OCPP has a mandated switch over process, the consumer could still be able to participate in DSR services with the new provider. It's therefore likely that the customer would still be able to, for example, charge their car in the DSR service, and therefore may in fact not be a high risk to the customer.

However, one particular risk is that a consumer will not be able to switch to a new DSRSP if their current one suddenly fails. The switching process should not be reliant upon the outgoing DSRSP, regardless of how the switch arises, i.e. insolvency or consumer choice.

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

Whilst insolvency is a risk, Energy UK believes that the relevant consumer protections outlined above and otherwise already in place, alongside a robust competitive market, will protect customers from financial risk at this stage.

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

With clear guidance on regulatory requirements, Energy UK does not believe that further financial controls are a necessary requirement at this stage.

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?

6. Timelines, Implementation and Next Steps

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.

Energy UK broadly agrees with the proposal as set out in the consultation.

Energy UK would welcome close collaboration with industry to determine whether the licensing is effective, and how it can be improved to benefit the consumer, the service provider, and the wider market.

Clarity is required regarding the approach to flexibility around timelines to reflect the nascent market, and resource service providers need to undertake to adhere to the regulation.

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.

As above.

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.

Once the requirements for the licence have been agreed upon, they should be introduced at the same time. The requirements proposed for the licence are specifically there to protect consumers, any phasing would seem to create a gap in those protections and therefore a risk to consumers unless some can be implemented as part of a transitional arrangement e.g., the consumer complaints handling standards.

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.

The consumer protection requirements in the licence should be regarded as the minimum standard for all consumers engaging the DSR market regardless of the size of the DSRSP they contract with, but refer to our previous comments when deciding on the particular elements to the licence.

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.

As above, compromising of 300MW will have an impact on the energy system. However, this varies between activity and type of load, particularly for EVCPs which are only connected around 20-30% of the time, and an EV compared to a heat pump. Turning off/on a 7kW home charger will not shift a large amount of load. As such, a load controller with 300MW worth of EVCPs on its back-office cannot in practice pose 300MW worth of risk to the grid. We would urge government to review the specifics as to how the threshold will play out in practice.

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.

As above, if it is decided that a licence is required, we would ask for further clarity as to how the two licences will interact, for example where a supplier is offering DSR services to their own supply customers. We would welcome clarity as to whether suppliers may be penalised under separate requirements in a 'double jeopardy' case where they operating under two separate licenses for the provision of the same service or contract to the consumer.

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

The cost recovery mechanisms seem appropriate.