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DESNZ consults on regulatory framework for TPIs

Headline assessment	
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Action if desired:	Respond to the consultation

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1 Assessment and recommendation

On 20 September, DESNZ published a consultation seeking views on [introducing regulation for Third-Party Intermediaries](#) (TPIs). In recognition of issues identified within its previous call for evidence and Ofgem's recent non-domestic market review, it is proposing to impose a general authorisation regime, which would require providers to comply with a set of general conditions which could apply universally.

The consultation also discusses the types of TPIs that could be within the scope of this regime, the policy objectives it is seeking to achieve, and which body would oversee the regulatory framework. We recommend that TPIs, energy suppliers and other interested parties respond to the consultation, which closes on 15 November 2024.

Cornwall Insight comment: Trusted TPIs are ideally positioned to help accelerate the energy transition through their specialist advice to consumers. Proportionate regulation will help these parties offering quality services be recognised for the value they bring to domestic and non-domestic customers. New legislation could also provide a springboard for increasing consumer confidence and making TPIs even better placed to assist in wider services, such as decarbonisation.

Questions remain about how to future proof a retail market that needs to accommodate increasingly dynamic behaviour, including integrating non-licensed activities. Innovation in the retail market remains crucial to support the energy transition and must not be inadvertently stifled.

2 Background

TPIs are an important part of the energy retail market, and the potential for regulation has been an ongoing topic of discussion for decades. The existing regulation of TPIs is minimal, and is currently managed by way of multiple voluntary, non-enforceable Code of Practice, and licence conditions that sit with suppliers to comply with. 2021 saw DESNZ issue a [call for evidence](#) on the state of TPIs in the market, specifically on the extent to which they cause harm (or risk of harm) to customers and the energy system. From Ofgem, the [non-domestic market review](#), undertaken across 2023 and resolving earlier this year in April, also uncovered a number of issues presented by TPIs who conduct malpractice.

Ofgem's findings included reports of TPIs engaging in misleading sales, harassing customers and not being transparent about the services they offer. For example, some TPIs only working with a small number of suppliers to secure contracts despite giving the impression to business customers they would be fully searching the market for the best deals. It found customers felt unable to take action against TPIs who they feel have misled or mistreated them.

With a push from Ofgem, DESNZ has consequently issued a new consultation to gather views on potential regulatory frameworks that could be put in place to help mitigate some of the risks posed by TPIs on the retail market, across both the domestic and non-domestic sectors.

2.1 Examples

In forming the rationale behind this consultation, DESNZ cites a number of other areas where TPI regulation has been introduced, both across other industry sectors and in other countries. The examples given for other industries include the Financial Conduct Authority (FCA), which is used for price comparison websites and insurance brokers, whereby an application must be submitted to demonstrate it complies with the principles of business and other relevant rules. As part of the authorisation approach, the FCA also operates different levels of permissions that some firms will need to apply for. The Heat Networks authorisation regime is another example, which DESNZ highlights will follow a 'specific' regime approach. Some activities will be defined as 'regulated' in regulations made by the Secretary of State, and certain activities will have to pass through the regulator.

Looking elsewhere, the paper also cites the Czech Republic, USA and Australia as additional perspectives on how TPI regulation has been implemented, including the requirement to hold a broker licence, state-run regulatory bodies and a supplier-driven regulatory initiative approach.

3 Proposals

3.1 Policy objectives

DESNZ outlines in this consultation the key policy objectives that it intends to achieve by introducing a regulatory framework for TPIs. These have been formed in response to the current issues within the market, and include:

- **Achievability of adequate consumer protections** – ensuring fairness, equity and consumer empowerment in interactions with TPIs, enabling informed decision-making, in addition to protecting vulnerable consumers.
- **Enforceability** - able to credibly deter TPIs from contravening their regulatory requirements, prevent harm from occurring and provide a suitable remedy for customer harm if it does occur.
- **Strategic fit with other Government initiatives** - seeking to achieve a coherent approach to regulation of TPIs across sectors where possible.
- **Regulator and TPI capacity and capability** - being flexible, to accommodate both existing and future TPI business models whilst also being proportionate to the harm or risk of harm identified.
- **Innovation and competition** - not acting as a barrier to innovation and net zero or distorting competition; being reflective of the significant number and variety of TPIs operating in the market, including where differences exist across or within each type of TPI.

Views are sought on whether these objectives are appropriate.

3.2 TPIs in scope

One key element of the consultation outlines which types of TPIs would come into scope of the chosen regulatory framework, and asks for views on whether stakeholders agree, or if any other types of TPIs should be explored. The proposed scope splits potential parties into high priority, meaning firm choices for inclusion, and low priority, meaning potential for expanded scope depending on stakeholder views. The lists include:

High priority: Energy brokers and consultants; price comparison websites/digital comparison tools; auto-switching; bill splitters; and sub-brokering.

Low priority: Resellers; independent advanced meter data agents; aggregators (for TPIs); and artificial intelligence.

Not in scope: Load controllers and aggregators (i.e. suppliers or load controllers).

DESNZ proposes that load controllers will not be in the scope of this work as there are already separate provisions under the Energy Act 2023 that will enable a separate licensing regime for them. As well as seeking thoughts on the categorisation of those in the above lists, DESNZ also asks whether existing regulations for resellers remain at an appropriate level, if suppliers are aware of which of their customers are resellers and how many customers they serve. Furthermore, it seeks views on how the TPI market may evolve over the next five years, particularly in the context of Market-wide Half-Hourly Settlement (MHHS).

3.3 Regulatory framework options

There are three finalised options presented in the consultation, as in Table 1 below, for how TPIs should be regulated, with DESNZ identifying who would be the responsible entity, those in scope, where accountability for TPI behaviour sits, and the requirements for TPIs operating in the market.

Table 1: DESNZ’s regulatory framework options for TPIs

Option	Responsible entity	Scope	Accountability	Requirements for operating
“Do nothing”	Various voluntary code providers and Ofgem.	Non-domestic TPIs	Suppliers	Currently, signing up to any TPI CoP is on a voluntary basis. Ofgem’s supplier licence conditions mean suppliers are required to work only with those TPIs meeting certain criteria, failure to do so could result in financial penalties.
General authorisation regime	Government to deliver legislation; a regulator entity to oversee the regime.	Domestic and non-domestic TPIs	TPIs	TPIs can carry out an activity as long as they meet a set of conditions. Enforcement activities could be carried out by the regulator if they identify that a TPI is not abiding by the conditions.
Specific authorisation regime	Government to deliver legislation; a regulator entity to oversee the regime.	Domestic and non-domestic TPIs	TPIs	TPIs would need to obtain authorisation from the regulator before carrying out the regulated activity.

The ‘do nothing’ approach would mean TPIs continue to use only voluntary codes of practice, such as the Retail Energy Code’s TPI Code of Practice. It would also mean the Standard Licence Conditions (SLCs) in the supply licence regarding the use of TPIs would still stand, which at present requires suppliers to work only with TPIs who are signed up to a Qualifying Dispute Settlement Scheme, as well as maintaining responsibility on suppliers to be transparent on TPI costs. Against the proposed policy outcomes, DESNZ does not consider this option to meet the objectives effectively.

The third option, a specific authorisation regime, would require a TPI to obtain authorisation from the regulator before carrying out the regulated activity. In a similar way to a licence regime, a specific authorisation regime could include exemptions. DESNZ also notes this would be a similar approach to the financial services market regulated by the FCA. Its view is that while a specific authorisation regime would provide multiple benefits to consumers, the regulatory burden it imposes is bigger compared to a general regime that could address the same issues.

3.3.1 Preferred approach

The general authorisation regime is DESNZ’s current preferred approach and would require primary legislation. This option would allow entities to provide services to operate in a certain market without the need for specific, individual licences. However, a designated regulator could take enforcement action against providers who did not comply with a set of general conditions. Specific regulatory conditions may also be applied to individual operators as required. Enforcement activities would be initiated by the regulator upon receiving reports of non-compliance from relevant entities with standing, such as an Ombudsman or consumer organisation. It would also cover both domestic and non-domestic types of TPIs.

The proposed design of this regime is discussed in more detail within the consultation. DESNZ highlights potential design principles, including:

- Transparency and accuracy
- Treating customers fairly
- Clear route for dispute resolution
- Appropriate data protection arrangements
- Training, governance and compliance
- Consideration of net zero and energy efficiency targets.

DESNZ is seeking views on whether stakeholders agree with its preferred approach; if exemptions should be considered for Small to Medium Enterprise (SME) TPIs; whether the proposed option influence market consolidation; as well as any anticipated costs and unintended consequences that may not have been identified. For the design principles, it also specifically seeks views on whether respondents agree with the design principle titled “clear route for dispute resolution”, which would require TPIs to maintain clear and accessible complaints processes and signpost customers to out-of-court dispute resolution providers.

It highlighted that the chosen regime must be future-proofed, enabling flexibility and adaptation for evolving market conditions and technologies, favouring a principles-based approach. For example, business customers may face potential harm if energy brokers never considered smart tariffs. TPIs may not be incentivised to proactively encourage consideration of smart meters, and this lack of promotion could leave business customers uninformed about the advantages of smart meters and smart meter-enabled tariffs.

3.4 Overseeing regulatory body

Looking at the role of the regulator, the preferred approach would see a designated regulator with responsibility for enforcing compliance with the regime’s regulator principles, including monitoring and compliance responsibilities. It lists Ofgem as a potential regulator for the regime, as well as a non-energy regulator such as the FCA, or the option to establish an entirely new regulatory body, though DESNZ noted this may be disproportionate.

If TPIs were to be directly regulated, it anticipates that Ofgem would amend the licence conditions on gas and electricity suppliers to reflect the new regulatory landscape and establish new licence conditions, if needed. These would supersede the existing code of practice that some TPIs currently adhere to.

A monitoring programme would also be put in place by the regulator and enable it to gather ongoing understanding of consumer experiences. Compliance would also be monitored through the rules and requirements of the regime. Where issues arise, as is the case for suppliers and heat networks, it expects TPIs would be first to address complaints before taking it to an independent ombudsman service. On compliance, the regulator will need to work to ensure the proportionality of any regulation - if a TPI is found to consistently work against the designated principles and is in breach of its obligations, then enforcement action may need to be taken.

4 Next steps

The consultation closes for written responses on 15 November 2024. Depending on the consultation responses, if DESNZ decides to pursue the proposal of introducing regulation of TPIs, including through the preferred option a general authorisation regime, its response will include details on how it proposes to do so.



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