

# Consultation

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## Future of the Ban on Acquisition-only Tariffs (BAT) beyond March 2025

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Publication date: 9 Oct 2024

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Response deadline: 6 Nov 2024

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The Ban on Acquisition-only Tariffs (“BAT”) is a mechanism which prevents suppliers from offering potentially unsustainable fixed-term deals exclusively to new customers. This ensures that any discounted deals available to new customers are also available to existing customers.

The BAT's Market-wide Derogation, which was introduced at the same time as the BAT, enables suppliers to offer bespoke, retention-only deals to their existing customers when they are coming to the end of a fixed-term deal.

On 30 July 2024 we published our Decision to retain the BAT for the entirety of its current extension period until 31 March 2025. We also announced that we would extend the BAT’s associated Market-wide Derogation for the same time period. This Decision followed from a Statutory Consultation where we had set out a minded-to position to remove both measures in October 2024.

In that Decision, we also signalled our intention to extend the BAT for a further 12 months beyond March 2025, while longer term decisions are being made on the future of the retail energy market.

In this Consultation we are therefore inviting stakeholder views on the merits of extending the BAT until 31 March 2026. We are also inviting views on the merits of extending the BAT’s associated Market-wide Derogation for the same time period. Separately, we are seeking views on how well the BAT, and the Market-wide Derogation, function at present and whether there are any reforms which could enable them to operate more effectively in the future.

## **Consultation** – Future of the BAT beyond March 2025

Following on from these views, we intend to issue a further statement on the future of the BAT and the Market-wide Derogation (explicitly setting out whether we will extend these for a further year) in November 2024.

We welcome views from energy consumers and others with an interest in the domestic retail energy supply market. We particularly welcome responses from energy suppliers, third party intermediaries and consumer groups.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response

## **Consultation** – Future of the BAT beyond March 2025

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## Contents

<b>Executive Summary .....</b>	<b>5</b>
Market Context - Introduction of the BAT.....	5
Next steps.....	5
<b>1. Introduction.....</b>	<b>7</b>
Background .....	7
What are we consulting on .....	7
Next steps.....	8
Related publications .....	8
<b>2. Extending the BAT beyond 31 March 2025 .....</b>	<b>9</b>
Context.....	9
Changing market dynamics .....	10
October 2023 Call for Input.....	10
May 2024 Statutory Consultation plus minded-to position .....	11
July 2024 Decision.....	11
Rationale for extending the BAT beyond March 2025 .....	11
Current proposal .....	14
<b>3. Future of Market-wide Derogation beyond March 2025.....</b>	<b>16</b>
Context.....	16
Fairness of the Market-wide Derogation.....	17
Impact on consumers and competition .....	18
Options.....	19
Current proposal .....	20
<b>4. Potential long-term changes to the BAT .....</b>	<b>22</b>
The BAT's role and operation .....	22
Operational Improvements to the BAT .....	22
Current proposal .....	24
<b>5. Your response, data and confidentiality .....</b>	<b>25</b>
Consultation stages.....	25
How to respond .....	25
Your response, your data and confidentiality .....	25
General feedback.....	26
How to track the progress of the consultation.....	27
<b>6. Privacy notice on consultations.....</b>	<b>28</b>
Personal data .....	28

## **Executive Summary**

### **Market Context - Introduction of the BAT**

The BAT was introduced as a temporary measure in April 2022, to complement the Market Stabilisation Charge (MSC) in protecting consumers from stability risks during the wholesale price crisis. Following the MSC's removal in March 2024, we noted that the BAT's impact on tariff pricing may have broader benefits for consumers which could warrant its retention beyond the immediate price crisis.

We considered these issues as part of a Call for Input in October 2023, as well as a Statutory Consultation in May 2024 which set out a minded-to position to remove the BAT in October 2024. This received strong stakeholder feedback calling for the BAT to instead be retained, in order to bolster consumer trust in the retail market. We also received strong representations that we should retain the BAT for a longer timeframe, to better observe its effects during stable conditions.

Our Decision in July 2024 acknowledged the strength of these views and we changed our minded-to position by extending the BAT until March 2025. In that Decision we also set out our intention to extend the BAT for a further 12 months, until the end of March 2026, with a view to keeping it in place until longer-term decisions are made on the future retail market (including a possible enduring role for the BAT). This consultation therefore invites views on our proposal to extend the BAT until at least March 2026.

We also invite specific views on the merit of the BAT's associated Market-wide Derogation, which enables suppliers to offer bespoke retention-only deals to their existing customers. It is our intention to extend this, alongside the BAT, for a further 12 months until at least March 2026 to allow for a better understanding of its impact on the market. We will welcome others' perspectives on this proposal alongside supporting evidence of its effect on the market in order to improve our understanding and decision-making on its role beyond March 2026.

Similarly, we are using this consultation to invite views on how the BAT might be amended in order to operate more effectively and robustly in future, i.e. beyond March 2026. These insights will aid our understanding of its existing role and our consideration of the impact that it might have as an enduring measure in future.

### **Next steps**

Consultation responses are due by 6 November 2024. We welcome any responses from stakeholders on extending the BAT and the Market-wide Derogation until March 2026, in addition to any views on the merits of making any necessary improvements to the BAT and/or the Market-wide Derogation beyond that date.

## **Consultation** - Future of the BAT beyond March 2025

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Subject to these views, we intend to issue a further statement (on whether we will extend the BAT, and the Market-wide Derogation, to 31 March 2026) later that month. Any responses should be sent to: [retailpolicyinterventions@ofgem.gov.uk](mailto:retailpolicyinterventions@ofgem.gov.uk)

## 1. Introduction

This section sets out the context of this policy consultation alongside the Consultation and Decision documents that have led to the introduction of the BAT. Furthermore, it sets out our latest policy position on the future of the BAT beyond its current expiry in March 2025, which forms the basis of our consultation, and further details the structure and overall headings for the remainder of this policy consultation.

### Background

- 1.1 The Ban on Acquisition-only Tariffs (“BAT”) is a market stability mechanism introduced in April 2022 to prevent suppliers from offering potentially unsustainable fixed-term deals exclusively to new customers. This ensures that any discounted deals available to new customers are also available to existing customers. The BAT was introduced as a temporary intervention under gas and electricity supply licences, respectively, condition 22B. Unless renewed annually by the Authority, the BAT will expire on 31 March of any given year. The BAT is currently set to expire, absent renewal, on 31 March 2025.
- 1.2 In May 2024 we consulted on our minded-to position to remove the BAT in October 2024 (“May 2024 Statutory Consultation”). Following a review of stakeholder feedback and ongoing market conditions, however, we published our Decision to retain the BAT for the entirety of its current extension, i.e. until 31 March 2025.
- 1.3 Our Decision noted that we also saw merit in observing the BAT’s impact on the market over a longer time period. Subject to further consultation, we set out our intention to extend the BAT for a further 12 months (until the end of March 2026), in order that it would remain in place while longer-term decisions were being made on the future of the retail market.

### What are we consulting on

- 1.4 In this policy consultation we are consulting on the future of the BAT in three parts:
  - a) **Section 2** considers and invites views on whether the BAT should be extended for a further 12 months, i.e. until 31 March 2026 whilst longer term decisions on the future of the BAT are being made.

- b) **Section 3** considers whether the BAT's associated Market-wide Derogation should be extended for a further 12 months alongside the BAT, i.e. until 31 March 2026, and invites views on whether it should be removed either before that date or thereafter.
- c) **Section 4** invites views on other improvements that could be made to the BAT, in order for it to operate as effectively as possible in any enduring version of the BAT.

## **Next steps**

- 1.5 Consultation responses are due by 6 November 2024. Any responses or other input, including requests for bilateral engagement, should be sent to: [retailpolicyinterventions@ofgem.gov.uk](mailto:retailpolicyinterventions@ofgem.gov.uk). Subject to responses, we intend to issue a further statement on the outcomes of this consultation (including whether we will extend the BAT, and the Market-wide Derogation, beyond March 2025) later that month.

## **Related publications**

The main documents related to this Consultation are:

May 2024 Statutory Consultation - [Statutory consultation on removing the ban on acquisition-only tariffs | Ofgem](#)

July 2024 Decision - [Decision: future of the ban on acquisition-only tariffs | Ofgem](#)



## **2. Extending the BAT beyond 31 March 2025**

As things stand the BAT will expire on 31 March 2025. This section sets out the key reasons for our recommendation to extend the BAT for a further 12 months, i.e. until 31 March 2026. We are seeking stakeholder feedback on the points explored in this section.

### **Questions**

Q1. Do you agree that the BAT should be extended for another 12 months post 31 March 2025, i.e. until 31 March 2026?

Q2. Do you agree with the reasons set out in this section supporting our proposal to extend the BAT until 31 March 2026?

Q3. Are there any other factors which Ofgem should consider, when determining whether or not the BAT should be extended post March 2025?

### **Context**

- 2.1 The BAT is a temporary market intervention which unless renewed annually by the Authority, expires on 31 March of any given year. Further to our previous consultation in October 2023 and further work, we announced in our February 2024 Decision that we would extend the BAT until 31 March 2025 but consult on removing the BAT from the market in the coming year. We decided against allowing the BAT to expire earlier to avoid any risk of uncertainty as a result of both the MSC and the BAT being removed from the market at the same time.
- 2.2 Furthermore, in our May 2024 Statutory Consultation we consulted on our minded-to position to remove the BAT from October 2024, i.e. 6 months earlier than its current expiry in March 2025. Our minded-to position was based on an assessment that potential negative impacts of removing the BAT on consumers (and on perceptions of consumer trust) were acceptable in the context of potential benefits for active consumers.
- 2.3 In July 2024, we published our Decision to instead retain the BAT until 31 March 2025, and our intention to consult in the coming months on a further extension of the BAT until 31 March 2026. This was a change to our May 2024 Statutory Consultation minded-to position. In taking this decision we gave regard to stakeholder feedback and weighted arguments regarding confidence in the market and consumer trust over the modelling of shorter-term gains to active customers. We also considered that further time observing the BAT would be beneficial to assess its impact on the market, not least in the context of Ofgem

making related long-term decisions on the future of the retail market in the near future.

- 2.4 Below we set out the journey of the BAT since its inception in the market and explore in more detail the reasons for our proposal to extend the BAT for another 12 months.

### **Changing market dynamics**

- 2.5 The BAT was first introduced in April 2022 as a temporary market stability measure, alongside the MSC, during a period of significant market volatility and high prices. Both measures were designed to encourage domestic suppliers to hedge demand in accordance with price cap indexation by providing a degree of protection against losses if these hedges were stranded by a wholesale price fall.

- 2.6 Given their temporary nature, it was always intended that both the MSC and BAT would be lifted once market conditions improved. It was on this basis, alongside its evolving impact on market competition and the effect of other measures improving supplier resilience, that we allowed the MSC to expire from 31 March 2024.

- 2.7 However, we had already noted that the BAT's additional effects on competition, fair pricing and tariff offers warranted a separate view to consider whether there was any consumer benefit in retaining it as a standalone measure. It was on this basis that we published our October 2023 Call for Input.

### **October 2023 Call for Input**

- 2.8 Our analysis of the BAT's wider role in the market to date had been predominantly focused on quantitative, economic impacts. Our assessment of these indicated that retaining it would likely result in net consumer costs. In our Call for Input, we set out our view at the time that retaining the BAT was not likely to provide significant consumer benefits in relation to market stability or price protection. On this basis we published our Decision in February 2024 to extend the BAT until 31 March 2024, but to consult on removing it from the licence 6 months later, in part to decouple this from any removal of the MSC on the same date.

## **May 2024 Statutory Consultation plus minded-to position**

2.9 Our May 2024 Statutory Consultation set out this option (to remove the BAT from 1 October 2024) as our minded-to position, alongside the alternative option to retain the BAT for the entirety of its extension period until 31 March 2025. We considered at the time that early removal of the BAT from October 2024 could expedite benefits by allowing consumers to ultimately enjoy cheaper deals quicker. We judged that these benefits were greater in significance than the varied but more minor disbenefits that could arise as a result of the BAT being removed earlier.

## **July 2024 Decision**

2.10 Our minded-to position in our May 2024 Statutory Consultation was based on an assessment that any potential negative impact on consumer trust of removing the BAT was acceptable in the context of benefits for active consumers. We received strong stakeholder feedback from both suppliers and consumer groups that this would not be the case and that the impact on consumer trust would be worse than we had anticipated.

2.11 We also acknowledged the potential impact of other market variances since the BAT's introduction to now, including changes to market participant behaviour with the introduction of financial resilience measures from March 2025 and the impact of the BAT as a standalone measure in the market. Furthermore, we acknowledged that a longer timeframe would allow further observation of the BAT in practice under regular market conditions as we consider the option of an enduring BAT as part of wider changes to the retail market in coming years.

2.12 For these reasons and noting significant stakeholder opposition, in our July 2024 Decision we changed our minded-to position and instead retained the BAT until at least March 2025.

## **Rationale for extending the BAT beyond March 2025**

2.13 In our July 2024 Decision, we also set out our intention to extend the BAT for a further 12 months beyond March 2025 using the existing licence condition renewal mechanism. We also set out much of our reasoning for this position, which we have summarised again below.

- 2.14 We welcome any views on our intention to extend the BAT until March 2026 based on the points set out below. In doing so, we would encourage stakeholders to indicate, as part of their response, any new or additional evidence that they are providing, over and above information provided as part of previous consultations on the BAT, to help us clearly assess all views.
- 2.15 The key factors behind our proposal to extend the BAT (until March 2026) include:

#### Vulnerable and indebted customers

- 2.16 One of the points raised with us by consumer groups in our most recent consultation was the potential negative impact that removing the BAT could have on vulnerable customers, or those in debt, who may be unable to switch suppliers as a result. We note that removing the BAT could particularly penalise customers like these, who may be locked out from the best available deals across the market by default. As well as enabling customers like these to benefit from their supplier's best available deals, we also expect that retaining the BAT in the short-medium term will reduce the risk that such customers face greater price increases, in order to subsidise the cheaper acquisition-only deals that they would not be able to access. We therefore see that there could be a double benefit for vulnerable customers as a result of retaining the BAT.

#### Consumer trust and vulnerable customers

- 2.17 In responding to our previous consultation, suppliers and consumer groups also presented strong arguments indicating that the potential qualitative benefits of retaining the BAT, including in bolstering consumer trust, should be given more weight. A key argument was that a supplier's existing customers would be locked out of their best deals without the BAT in place, which would lead to an erosion of trust through the perception of an unfair market that favours only the most active switchers.
- 2.18 We consider, in this light, that there is a reasonable concern that this impact on trust could affect effective competition in the medium-to-longer term.

### Opportunity to observe the BAT's functioning within a more stable market

- 2.19 Up to now the BAT has largely existed as a complement to the MSC (removed in March 2024) and has operated within non-standard market conditions. Each of these factors has made it difficult to assess the BAT's standalone impact on the market.
- 2.20 A longer timeframe, where the BAT is in place without the MSC and in less volatile market conditions, will enable us to observe its impact more clearly. This will improve the robustness of any conclusions we can draw in relation to its impact on areas such as pricing, supplier behaviour, vulnerable groups and consumer trust. In turn, this should provide improved and more reliable evidence on which to consider the merits of an enduring BAT as part of the future retail market.

### Minimum Capital Requirements

- 2.21 Related to this, extending the BAT beyond March 2025 would keep it in place from the point at which financial resilience measures for suppliers, in the form of Minimum Capital Requirements, are due to be implemented (i.e. from March 2025).
- 2.22 We noted in our July 2024 Decision that remaining suppliers were already more resilient and better capitalised than many who exited the market in recent years. Whilst we consider that implementation of the Minimum Capital Requirements from March 2025 will likely help to further mitigate any aggressive competitive practices in the market, we remain wary that the true impact of the measures cannot be fully and reliably assessed until after they have taken effect.
- 2.23 Retaining the BAT beyond March 2025 may therefore provide stability and consistency for suppliers as these new financial resilience measures take effect. It may also make observing their (and the BAT's) effect easier, if retail market rules are more consistent in the year leading up to and following their introduction.

### Consistency and clarity while long-term decisions are made on the future retail market

- 2.24 The BAT was introduced as a short-term measure and continues to exist in its current form via proactive annual extensions. As we have noted, wider and more

strategic decisions on the future of the retail market are currently being considered. This includes consideration of an enduring version of the BAT, which would not need to be annually renewed, or removing the BAT from the market altogether.

- 2.25 In the meantime we are keen to provide greater clarity on its status, to avoid suppliers and market participants facing an annual round of uncertainty over whether it will continue to be extended. One way or another, we have been keen to articulate a clear medium-term position on the BAT.
- 2.26 In part, that is why we used our previous Decision document to strongly indicate our intention to extend the BAT until at least March 2026. In doing so, we intend to signal that the BAT will remain in place as a feature of the market until decisions are made on its permanent status. If we are still not clear on the BAT's permanent status by then (i.e. on or shortly before March 2026), as things stand our intention would be to renew the BAT for a further year. Our hope is that, in setting out this position, we can provide a level of certainty even in circumstances where the BAT is not formally an indefinite feature of the market.

### **Current proposal**

- 2.27 For the reasons set out above and following our previous Statutory Consultation, our intention is to extend the BAT for a further year (until 31 March 2026).
- 2.28 On balance we consider that our position supports consumer interests through its anticipated positive impact on consumer trust and its ability to better support inactive and vulnerable customers. The BAT will also provide supplementary consumer protection as we assess the impacts of supplier financial resilience measures from March 2025 and observe the BAT's impact on consumers and the market as a standalone measure.
- 2.29 Retaining the BAT will enable existing customers to access their own suppliers' deals, at a time when consumer trust may be low. We had previously taken the view that any potential negative impact on consumer trust of removing the BAT was acceptable in the context of short-term benefits for active consumers. In the course of consulting on this point, we noted the strong arguments from both suppliers and consumer groups that this would not be the case. We have therefore been persuaded that the potential qualitative benefits of retaining the

BAT for consumers, including in terms of consumer trust, should be given more weight.

- 2.30 In retaining the BAT, we will also avoid the risk of creating additional consumer harm for vulnerable or indebted customers. Without the BAT, such customers would risk being 'locked out' from accessing the cheapest deals available to them, given their possible inability to switch suppliers. Retaining the BAT ensures that this disbenefit will not materialise. As things stand such customers may even benefit from a cheaper retention-only deal, via the BAT's Market-wide Derogation.
- 2.31 The BAT's retention will also provide supplementary protection for consumers (as well as suppliers) in the interim period whilst new financial resilience measures, including Minimum Capital Requirements, take effect in the coming year.
- 2.32 In addition, the BAT's retention will also enable better observation of its role as part of a stable market. This should improve the quality of our evidence base, and ultimately our decision-making, when making long-term, enduring decisions on the future of pricing and of the BAT itself.
- 2.33 We acknowledge that removing the BAT could reduce prices for active consumers in the short-term. Our decision to retain it remains a closely balanced one. However, we judge that the benefits of doing so, in the various areas set out above, mean that retention of the BAT beyond March 2025 would be in consumer interests.
- 2.34 For the avoidance of doubt, unless we receive new evidence setting out compelling reasons why we should not do this, our intention is to formally extend the BAT on this basis in writing (as per our existing licence powers) after this consultation has concluded in November 2024.

### 3. Future of Market-wide Derogation beyond March 2025

The Market-wide Derogation enables suppliers to offer bespoke 'retention-only' deals to their existing customers who are reaching the end of a fixed term contract. This section sets out the key considerations in reviewing the potential impact of the Market-wide Derogation in coming months, including on the principles of fairness, consumer interest and market competition. It sets out our proposal to retain the Market-wide Derogation until March 2026 alongside the BAT (or until the point at which we have clearer evidence of its impact on all these factors) and seeks stakeholder views on this proposal. We also seek views on potential changes to the Market-wide Derogation, should a decision be made to retain it beyond March 2026, in order that it can serve the market better.

#### Questions

- Q4. Do you believe that the existence of the Market-wide Derogation, and the ability of suppliers to offer bespoke retention-only deals, is consistent with the principle of consumer fairness within the retail market?
- Q5. Do you believe that the Market-wide Derogation has (or is likely to have) a significantly positive or negative impact on consumer interests, or on competition within the retail market? Please provide supporting evidence wherever possible.
- Q6. Are there any other factors which should be considered when looking at the impact of the Market-wide Derogation on the market?
- Q7. Do you agree with our proposal to retain the Market-wide Derogation until March 2026, and our reasons therein supporting this proposal?
- Q8. Would you recommend any changes to the operation of the Market-wide Derogation (assuming that it was being retained for the longer term)?

#### Context

- 3.1 In the context of extending the BAT for the medium term, we are also considering the role of its associated Market Wide Derogation (which enables suppliers to offer bespoke retention deals to their own customers who are reaching the end of a fixed term contract) and whether this should continue to be extended alongside the BAT. As things stand, we see two factors which might influence the retention of the Market-wide Derogation:
- a) Impact on fairness: if it was broadly considered unfair, as a point of principle, that retention-only deals of this kind should be available to one set of customers and not available to others; and/or



- b) Impact on consumers and competition: if we judged that the existence of the Market-wide Derogation was unhelpful to consumers, or to market competition, in some significant way.

### **Fairness of the Market-wide Derogation**

- 3.2 One of the key considerations in choosing to retain the BAT up to now has been the positive role that it may have in maintaining widespread consumer trust in the retail market. Specifically, supporters of the BAT argued that consumers would consider it unfair that the best available deals from any given supplier may not be available to that supplier's existing customers. Some have gone further and made the case that, as a point of principle, all deals should generally be available to all customers.
- 3.3 The Market-wide Derogation enables suppliers to offer bespoke, non-public deals only to their existing customers. We would welcome views on the fairness of this. On one hand it follows economic logic – existing customers are cheaper to serve, given the reduced costs of acquiring and advertising deals to them, and it appears reasonable that such customers should have any saving reflected in a cheaper tariff.
- 3.4 However, this ultimately creates a subset of consumers who have access to a cheaper deal which others in the market are not able to access. Some may consider this inherently unfair, given the argument set out above that all deals should be available to all customers. Following that logic, the Market-wide Derogation could be removed and any 'acquisition saving' that suppliers make by retaining existing customers could be incorporated into tariff costs for all of their customers, rather than just those for existing customers.
- 3.5 In addition, the presence of a Market-wide Derogation could conceivably facilitate price discrimination within the base of a supplier's existing customers, thereby encouraging a 'loyalty penalty within loyal customers' where suppliers offer more convenient tariffs only to those existing customers that are more likely to switch. This could be alleviated by stricter rules on the derogations that can be offered or through better transparency of retention-only tariffs on offer, something which we discuss in the following section. We would welcome views and evidence on any instances of this happening in the market.

- 3.6 We would welcome any views on the relative fairness of either retaining or removing the Market-wide Derogation, in terms of impacts on existing and new customers.

### **Impact on consumers and competition**

- 3.7 The alternative basis for amending the Market-wide Derogation would be if we considered that it negatively impacted market competition in some significant way<sup>1</sup>.
- 3.8 The derogation's current effect on competition is likely to be minimal, not least given the relatively low number of fixed-term contract deals available in recent years. However, with more such deals likely to emerge as markets stabilise, its impact could increase.
- 3.9 There are ways in which, in theory, the derogation could be seen to damage market competition, including:
- a) That it allows suppliers to 'tie up' existing customers with a deal that the competitive market cannot rival.
- 3.10 As set out in the section above, part of the logic behind retention-only deals is that an existing customer is cheaper to serve, given that there are less acquisition/advertising costs, therefore any saving can be passed on. While this is economically consistent, it makes existing-supplier deals more financially competitive ones by default; any rivals face an inbuilt disadvantage when trying to offer a comparative competitive deal.
- 3.11 This may be positive in various ways – vulnerable or heavily indebted customers who are unable to switch supplier may receive better deals as a result, compared against circumstances where the Market-wide Derogation is removed and acquisition costs are shared across all tariffs.

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<sup>1</sup> In this context it is worth noting that the derogation (as with the BAT itself) was introduced at a time of extreme price volatility and with a view to stabilising markets and providing suppliers with certainty at a time of crisis, rather than to regulate competition during normal market conditions.

- 3.12 Suppliers would also likely have improved certainty in terms of their customer base staying with them at the end of fixed term contract terms. This may enable suppliers to innovate and focus on improving quality of service for their customer base for the longer term.
- 3.13 Conversely, one risk is that markets may stagnate instead; if it is less viable to acquire customers, then suppliers will have less incentive to compete vigorously. Moreover a reliable and dependable customer base could result in suppliers innovating less, rather than more, on the basis that customers are more likely to stay and benefit from cheaper prices regardless.
- b) The manner in which the Market-wide Derogation operates may limit customers' ability to compare open-market deals against the retention offer being made.
- 3.14 At present there are no rules requiring that retention deals be made public, nor that they be available to TPIs/PCWs for comparison purposes. Consumers may also receive such deals by letter or over the phone, with limited ability or understanding of how to compare these against rival tariff offerings. The same problem is likely to arise both when a retention deal is offered and when it is coming to an end.
- 3.15 This would obviously not be an issue if the derogation were removed entirely. Even if the Market-wide Derogation were to be retained, one option would be to mandate that the details of any retention-only deal should be easily accessible by comparison sites, to aid consumers both at the time of agreeing to the deal and when it comes to an end.
- 3.16 We would welcome any views on the extent of this problem of transparency for consumers, and their ability to compare deals sensibly, including possible solutions should the derogation be retained indefinitely.

## **Options**

- 3.17 Our clearest options are to either retain or remove the Market-wide Derogation, based on our understanding of its impact on consumer fairness and competition in the market more generally.

3.18 If we opted to retain the derogation, we would consider options to amend it in order to either improve its effectiveness or reduce issues like lack of transparency and comparability for consumers, as set out above.

### **Current proposal**

3.19 As above, our proximity to the wholesale price crisis and the relatively small number of fixed term contract deals available mean that there is currently negligible real-world evidence on the Market-wide Derogation's impact (or potential impact) on the retail market.

3.20 At present, our proposal is to extend the Market-wide Derogation alongside the BAT until 31 March 2026. On balance, we consider that our position supports consumer interests.

3.21 In retaining the Market-wide Derogation, and therefore enabling suppliers to offer bespoke deals to their existing customer base, we expect that existing customers may be able to benefit from cheaper tariffs. This follows the economic logic that existing customers are cheaper to serve, given the reduced costs of acquiring and advertising deals to them, and as such it would appear reasonable that such customers should have this saving reflected in a cheaper tariff.

3.22 In particular, we consider that retention of the Market-wide Derogation would benefit those existing customers that are vulnerable or heavily indebted and therefore unable to switch supplier, as they may receive better deals as a result compared to circumstances where the Market-wide Derogation is removed and acquisition costs are shared across all tariffs.

3.23 Furthermore, we would expect that retention of the Market-wide Derogation would mean that existing customers would benefit from improvements in their supplier's ability to innovate and improve quality of service, given the certainty in their customer base for the longer term.

3.24 However we would welcome views on each of these issues as outlined above in order to better inform our understanding on each and with a view to possible future changes if the BAT is reshaped or needs to be extended again at a later date.

- 3.25 With that in mind, our proposal to extend the Market-wide Derogation until March 2026 is not as strongly held as our proposal to extend the BAT. If there is sufficient evidence that the derogation actively cuts across the principle of fairness in the market, or that it may have a significant detriment to competition and consumer interests in the coming year, we may yet seek to remove it when (as we currently intend) the BAT is extended further from April 2025. We would use our Decision document for this consultation to communicate any such decision. We may also use that Decision document to signal our intention to make changes to the derogation that would take effect after that date (i.e. after March 2026).
- 3.26 For the avoidance of doubt, subject to this consultation, it is currently our intention to extend the Market-wide Derogation, in tandem with our intention to extend the BAT, until March 2026.

## 4. Potential long-term changes to the BAT

In this section we invite views on whether the BAT could be changed to operate more effectively **in future** if it were retained as an enduring feature of the market (with the proviso that decisions on the long-term future of the BAT are yet to be made). Any views provided will aid both our understanding of how the BAT operates at present and our consideration of its possible role and impact as a permanent measure.

### Questions

Q9. Are there practical and/or operational difficulties with how the BAT functions at present? Where possible, we would also welcome any perspectives on how these may be resolved in any future enduring BAT.

### The BAT's longer-term role and operation

- 4.1 The previous sections have discussed our proposal to extend the current temporary version of the BAT, and the Market-wide Derogation, for another 12 months for the reasons outlined.
- 4.2 As noted in previous consultations, we are also actively considering the prospect of an enduring BAT as part of ongoing work on the future of price protection (FPP). In effect, the ability to observe the BAT in more regular market conditions over the coming year will help us to assess the merit of this. A Decision on whether to retain the BAT permanently will be made at a later date and in the context of this wider work on FPP.
- 4.3 Should we choose to make it permanent, we are mindful that we may wish to make amendments to the functioning of the BAT in order that it operates as robustly, efficiently and transparently as possible, whilst meeting the needs of future domestic consumers.
- 4.4 We are therefore inviting any broader views on how the BAT operates at present, including any recommendations on how it could be amended as part of any potential future version.

### Operational Improvements to the BAT

## Incentivising sustainable supplier growth in line with future demands

- 4.5 We would welcome views on whether the day-to-day operation of the existing BAT would continue to serve the purpose for future consumers under its role as a potential price protection measure.
- 4.6 Currently, the BAT as designed works to serve its original purpose as a market stability measure, by ensuring that suppliers offer the same tariffs to their existing customers as they offer to new customers. By doing so, it has sought to restrict unsustainable market growth and related market practices in order to prevent another supplier collapse as seen during the gas crisis.
- 4.7 One example relates to introductory offers. Up to now we have operated on the basis that rewards and promotions that are exclusively aimed at new customers are almost certainly going to be contrary to the BAT, as per current licence conditions, and have advised suppliers to refrain from offering any such promotions.
- 4.8 With markets changing, however, and a significant reduction in the stability risks that the BAT was introduced to tackle, we appreciate that alternative approaches to regulate sustainable market growth may be viable. This includes the consideration of innovative options which foster greener market growth, whilst also protecting the interests of future domestic consumers.
- 4.9 We will welcome views on whether our existing approach is the right one to take for any future, enduring version of the BAT - in other words, whether the BAT should continue to act (or seek to act) as an effective ban on all introductory offers too.
- 4.10 We would only seek to make changes if these were likely to benefit healthy competition or consumer interests. We are also mindful of the risk that any ability to provide offers of this kind could be exploited, or loopholes found within them, which may result in perverse outcomes. In that context we will welcome any insights into how best to enforce any proposed changes, too.

## Other practical or operational issues

- 4.11 We will also welcome any insights into other practical or operational difficulties or issues that the BAT may cause – particularly where these are issues that Ofgem

may be less well sighted on – as well as perspectives on how these might also be resolved.

- 4.12 For the avoidance of doubt, this request does not presuppose any decision on whether the BAT will be retained as an enduring feature of the market. No such decision has been made.

### **Current proposal**

- 4.13 We are not minded to change the BAT's operation significantly while it remains a temporary measure. Broadly speaking, our view is that it fulfils its current purpose and has remained fairly robust in its current form.
- 4.14 We would need to be persuaded that the benefits of any short-term change to its operation would be great enough to justify a statutory consultation, and associated licence changes, to amend a measure that still is a temporary part of the licence and must be proactively extended annually in order to exist at all.
- 4.15 Instead, we expect that any information provided would help us with considering future pricing options in a more rounded fashion and improve our understanding of the BAT's role (and possible limitations) as it operates at present.



## 5. Your response, data and confidentiality

### Consultation stages

5.1 We invite stakeholders to submit comments on any aspect of this consultation on or before 6 November 2024. Subject to these views, we intend to issue a further statement (on whether we will extend the BAT, and the Market-wide Derogation, to 31 March 2026) later that month.

### Consultation Stages

Policy Con open: **9 October 2024**

Policy Con closes closes. Deadline for responses: **6 November 2024**

Responses reviewed and Decision published: **November 2024**

BAT and Market-wide Derogation either extended until 31 March 2026, or removed from market: **1 April 2025**

### How to respond

We want to hear from anyone interested in this consultation. Please send your response to [retailpolicyinterventions@ofgem.gov.uk](mailto:retailpolicyinterventions@ofgem.gov.uk).

We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

### Your response, your data and confidentiality

You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.

If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

### **General feedback**

We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)

## How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. Choose the notify me button and enter your email address into the pop-up window and submit.

[ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)

Notify me +

Would you like to be kept up to date with *Consultation* name will appear here? subscribe to notifications:

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Submit >

Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

**Upcoming** > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

## 6. Privacy notice on consultations

### Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

#### 1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk)

#### 2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### 3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

#### 4. With whom we will be sharing your personal data

We will not share personal data contained in confidential consultation responses with any organisation outside of Ofgem unless legally obligated to do so. Unless you indicate otherwise, we will make your response, as provided, available online.

#### 5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for as long as an audit trail on decision-making relating to the questions discussed in this document should reasonably be available

#### 6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete

- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**7. Your personal data will not be sent overseas**

**8. Your personal data will not be used for any automated decision making.**

**9. Your personal data will be stored in a secure government IT system.**

**10. More information** For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".