Decision

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

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Standard Licence Condition (SLC) 22B, the Ban on Acquisition-only Tariffs ("**BAT**") is due to expire by default on 31 March 2025, unless renewed as per our existing licence powers. From 9 October until 6 November 2024, we consulted on extending the BAT until 31 March 2026 ("**October 2024 Policy Consultation**"). In that document, we also consulted on the merits of extending the BAT's associated Market-wide Derogation for the same period, as well as inviting views on any future reform to the way the existing BAT and Market-wide Derogation function at present.

We have carefully considered stakeholder feedback provided as part of this and previous related consultations. Based on the evidence received, this document sets out our Decision to extend the BAT until at least 31 March 2026. For clarity, this document should be taken as our written statement to extend the BAT for another 12 months using our existing licence powers. The Directions (to Gas and Electricity Licensees respectively) that provide for the Market-wide Derogation from SLC 22B and that have been in force since 14 April 2022, remain unchanged.

Additionally, we have acknowledged feedback received on the merits of exploring possible reforms to the BAT. These will be taken into consideration in our ongoing work on the future of price protection, in which an enduring BAT is one potential option.

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Context

We have decided to extend the Ban on Acquisition-only Tariffs for a further year, until 31 March 2026, as well as its associated Market-wide Derogation. This is consistent with our minded-to position at the outset of this consultation.

Retaining the BAT will enable existing customers to access their own suppliers' best deals. We remain persuaded of the qualitative benefits of this, including in terms of bolstering consumer trust at a time when this may be low. We also believe that retaining the BAT will reduce the risk of consumer harm for vulnerable or indebted customers, stopping them from being 'locked out' from the ability to switch to the cheapest deals on the market - which, if the BAT did not exist, would most likely be with a different supplier to their own.

We note the range of opposed views on the BAT and that opinions on its merits are strongly divided. A high number of charities, consumer groups and suppliers favour its retention while price comparison sites and a number of consumers favour its removal. We acknowledge that removing the BAT would also bring some benefits, most likely for active switchers and competition, and our decision to retain it has been a finely balanced one.

As noted before, we are also keen to provide greater clarity on the BAT's medium-term status, to avoid market participants facing an annual round of uncertainty over whether it will continue to be extended. Today's Decision signals our expectation that the BAT will remain in place as a feature of the market until substantive decisions are made on its permanent status. If we are still not clear on the BAT's permanent status by the end of the extension announced today (i.e. on or shortly before March 2026), as things stand our intention would be to renew the BAT for a further year.

We will, of course, continue to observe the BAT's impact on the market during this time and are prepared to change that position if the BAT's impact proves materially different to what we expect. But 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.

We are also grateful for the range of views that have been provided on the merits of the Market-wide Derogation, including proposals for how it may be amended and improved in future. There are some consistent themes amongst these views, including for greater transparency on the nature (and amount) of retention-only offers being provided under the derogation. As noted in our previous document, we will consider these points in the context of whether the BAT is to be retained as a permanent measure and how it could be improved if so. We will also consider the appropriateness of making changes to the existing, temporary version of the BAT and Market-wide Derogation. There are no immediate plans to do so, therefore any proposed changes will be communicated separately.

Decision

We will extend the BAT for a further year, therefore keeping it in place until 31 March 2026. The current Market-wide Derogation from SLC 22B for fixed retention tariffs will remain in force alongside SLC 22B at least for that period.

1.Introduction

Section summary

Earlier this year we consulted on whether the BAT should be retained for the entirety of its current extension period, until 31 March 2025. Based on responses to that consultation, we signalled our intention to retain the BAT beyond that point. We had not, however, expressly consulted on whether the BAT should be extended beyond March 2025 until now. Following that consultation we are now confirming that the BAT will be extended until at least 31 March 2026. The related Market-wide Derogation will also remain in place.

Context and related publications

1.1. The Ban on Acquisition-only Tariffs ("**BAT**") ensures that any discounted deals available to a supplier's new customers are also available to existing ones.

1.2. Introduced in April 2022 as a temporary market intervention during the gas crisis, the BAT in essence prevents suppliers from offering potentially unsustainable fixed deals exclusively to new customers in order to protect consumers from market stability risks.

1.3. Alongside the Market Stabilisation Charge ("**MSC**"), which was introduced at the same time but removed from April 2024 following a review of market conditions, the merits of the BAT in providing broader consumer benefits were explored in our Call for Input in October 2023, and further in our May 2024 Statutory Consultation. In this Statutory Consultation, following Ofgem's analysis we consulted on a minded-to position to remove the BAT from October 2024 (i.e. 6 months earlier than its existing licence expiry).

1.4. Our Statutory Consultation received strong stakeholder feedback, particularly from suppliers and consumer groups, arguing that the impact on consumer trust would be much greater than we anticipated, thus calling for the BAT to be retained until at least March 2025. Further, we received strong views that the BAT should be retained beyond March 2025, to better observe its effects during more stable market conditions and line up more holistically with any future changes to price protection including a possible enduring BAT.

1.5. On the basis of the strength of these views, we changed our minded-to position in our July 2024 Decision and decided to retain the BAT for the remainder of its extension period (i.e. until March 2025). We noted in that Decision that we would shortly consult on the merits of extending the BAT beyond March 2025. This was the core purpose of our recent October 2024 Policy Consultation - to gather further views on the merits of extending the BAT, beyond those we already received in response to our Statutory Consultation.

1.6. We consulted from 9 October until 6 November 2024 on the merits of extending the BAT, and the associated Market-wide Derogation, until 31 March 2026. We also sought views on how well both measures function at present and whether there were any reforms necessary to enable them to operate more effectively in the future.

1.7. In that consultation document we reiterated our intention to extend the BAT until March 2026 on the basis of the views set out therein, and provided that we did not receive any new compelling evidence from stakeholders to suggest otherwise.

1.8. Further to this consultation and following review of all feedback received, this document sets out our Decision to extend the BAT, and the Market-wide Derogation, until 31 March 2026. In essence, this is to allow further time to better observe the BAT as a standalone measure whist helping to bolster consumer trust, especially for vulnerable and indebted switchers who may be unable to switch. This document also acknowledges feedback received from stakeholders on how both measures could be improved to ensure more efficient and effective delivery of the BAT in future.

1.9. The main documents related to this Decision are:

October 2024 Policy Consultation - [Future of the Ban on Acquisition-only Tariffs (BAT) after March 2025 | Ofgem]

July 2024 Decision to Statutory Consultation - [Decision: future of the ban on acquisition-only tariffs | Ofgem]

Our decision-making process

1.10. Further to our consultation, we received 81 responses; 11 from domestic suppliers, 4 from consumer groups/charities, 5 from third party intermediaries and 61 from consumers. We have taken responses from all stakeholders into consideration when reaching our Decision, and all non-confidential responses are available on our website here: [Future of the Ban on Acquisition-only Tariffs (BAT) after March 2025 | Ofgem]

1.11. Following this Decision, the BAT will be extended until 31 March 2026 using the existing renewal mechanism within SLC 22B. To confirm, there will be no licence modifications required to SLC 22B for both gas and electricity domestic suppliers in order for this Decision to take effect.

1.12. Any subsequent changes required to SLC 22B in light of future of price protection policy development will be taken into consideration separately at that time.

Decision-making stages

Date	Stage description
09/10/2024	Stage 1: Consultation open
06/11/2024	Stage 2: Consultation closes (awaiting decision), Deadline for responses
November 2024	Stage 3: Consultation decision and responses published

General feedback

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall quality of this document?
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. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments

Please send any general feedback comments to stakeholders@ofgem.gov.uk.

2. Extending the BAT beyond 31 March 2025

Section summary

Further to our Policy Consultation, we have decided to extend the BAT for a further 12 months until 31 March 2026. This section summarises stakeholder feedback to our proposals and sets out the reasons for our Decision to extend the BAT until this date.

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?

Our proposals

2.1. SLC 22B, the BAT licence condition, currently expires on 31 March 2025 unless renewed using the existing renewal mechanism within SLC 22B.

2.2. In our October 2024 Policy Consultation, we proposed to extend the BAT for a further year until 31 March 2026. Our proposal to extend the BAT for a further year was supported with the following reasons:

i) <u>to bolster consumer trust</u>: Removing the BAT from March 2025 could in theory mean that a supplier’s existing customers would be locked out of their best deals. This could lead to an erosion of trust through the perception of an unfair market that favours only the most active switchers. Our initial assessment per our July 2024 Statutory Consultation was that any potential negative impact on consumer trust in removing the BAT would be acceptable in the context of short term benefits for active consumers. However, we were persuaded by the strength of arguments (received by way of response to that Statutory Consultation) that the potential qualitative benefits of retaining the BAT for consumers, including in terms of consumer trust, should be given more weight. Furthermore, we noted that there was a reasonable concern that this impact on trust could affect effective competition in the medium-to-longer term.

ii) <u>to protect vulnerable and indebted customers who may be unable to switch suppliers</u>: The BAT’s removal could particularly hit hard on vulnerable consumers, or those in debt, who may be unable to switch suppliers as a result of their circumstances and therefore benefit from the BAT allowing them to access their own supplier's best deals. We also consider 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.

iii) <u>to observe the BAT's functioning as a standalone measure in a more stable market</u>**:** The BAT has only ever existed alongside the MSC, and that too under non-standard market conditions. 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. We anticipate that this will also 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, and should therefore provide improved and more reliable evidence on which to consider the merits of an enduring BAT as part of the future retail market.

iv) <u>to provide stability and consistency for suppliers ahead of upcoming supplier resilience measures</u>**:** 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. 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.

v) <u>to bring in line with future decisions on the future of the retail market</u>: 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. 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 or not. Put simply, we consider that the BAT will remain in place as a feature of the market until decisions are made on its permanent status.

2.3. Our Policy Consultation invited feedback from stakeholders on each of the points above and set out that unless we received new evidence setting out compelling reasons why we should not do this, our intention was to formally extend the BAT (as per our existing licence powers) after the consultation concluded in November 2024.

2.4. On this basis, and to avoid repetition of views already communicated to Ofgem via stakeholders and which we have previously summarised via our consultation documents, we have sought to only highlight instances of new evidence or viewpoints in our summary of responses below.

Stakeholder feedback

Suppliers

2.5. All eleven suppliers agreed with our proposals to extend the BAT post March 2025, endorsing our reasons for its extension and welcoming that these will be assessed in the coming 12 months under changing market conditions.

2.6. In supporting our proposals and providing new evidence, one supplier noted that domestic switching has increased to its highest levels since the energy crisis, suggesting that customers do not need acquisition tariffs to convince them to switch, and further suggesting that the BAT has not hindered switching rates[1].

2.7. Another supplier noted that in promoting tariff transparency across customers, the BAT's extension aligned with the Government's work on tariff interoperability to help ensure more accessible and transparent competition across the market.

2.8. One supplier noted concerns around the timing of the BAT's potential removal as we approach winter. With a growing energy debt, they flagged that price cap increases have an increasing impact on a customer's ability to pay, therefore making the BAT's extension at this time even more crucial.

2.9. Lastly, one supplier noted the absence of an updated IA published alongside our policy consultation and sought for future updates to be published accordingly.

Consumer/charity groups

2.10. All four consumer/charity groups agreed with our proposals to extend the BAT post March 2025 and furthermore agreed with our reasons to extend. In particular, there was welcome recognition of our consideration of consumers in debt (as flagged by stakeholders in their responses to our May 2024 Statutory Consultation).

[1] They quoted market analysis from BFY which shows that 290,000 customers switched supplier in September 2024, the highest level since the energy crisis [Domestic customer switching jumps to highest level since energy crisis]

2.11. In supporting our proposals and providing new evidence, one consumer group presented additional evidence to show the positive impact that the BAT has had on tackling the "loyalty penalty" in energy. They presented evidence suggesting that few consumers actively engage in complex markets[2]. Furthermore, their data suggested that this was more concerning for consumers on low incomes or digitally excluded[3].

2.12. Further, one consumer group noted that Ofgem should ensure any future version of the BAT aligns with our Consumer Confidence Programme and vulnerability strategy refresh, particularly in considering the role a Consumer Duty will have on ensuring all products have fair value to customers.

Third Party Intermediaries and price comparison websites (PCWs)

2.13. In line with their previous BAT consultation responses, all five PCWs opposed our proposals to extend the BAT post March 2025 and collectively rejected our reasons to extend the BAT.

2.14. One PCW submitted new evidence based on newly commissioned research, reiterating their view that the BAT effectively penalises those who are more likely to engage in the market without providing sufficient countervailing benefits to the disengaged or vulnerable.

2.15. Nevertheless, three PCWs noted that with a possible extension of the BAT, Ofgem should now consider how to minimise any potential negative impacts on consumer engagement and competition in the market. They noted the importance of this particularly given Government desires for consumers to engage more with innovative and low carbon tariffs in line with its net zero transition. Further, they noted that where these changes were ready and possible we should expediate action immediately where possible rather than wait for a longer-term, enduring BAT. Some examples of potential work/ideas to drive this change from one PCW included:

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[2] Evidence was quoted from the Competition and Market Authority’s report into the GB Energy Market, which found that a third (34%) of respondents said they had never considered switching supplier. Over half (56%) said they had never switched supplier, did not know if it was possible or did not know if they had done so.

[3] Research quoted from the Personal Finance Research Centre (2016) which found that three-quarters (73%) of low-income households had not switched fuel supplier in the last two years, and 83 per cent of those that were digitally excluded had not switched in the last two years.

allowing acquisition-only tariffs with limited price differentials; running a trial where acquisition-only tariffs were made available in limited geographic areas, while the rest of the UK continues with BAT to act as a control group; a conditional exemption from the BAT provided the supplier materially lowers its SVT below the level underpinning the price cap modelling.

Consumers

2.16. All but one of the 61 consumer respondents opposed our proposals to extend the BAT post March 2025.

2.17. Consumer respondents were part of a major consumer campaign led by one party, which ultimately considered the BAT to be harmful to competition and called out its attempts to protect the most vulnerable customers, but in doing so, not all those consumers in between. This group were highly sceptical of our argument on consumer trust. On debt, their suggestions included allowing customers in debt to access cheaper deals by better facilitating their ability to switch (rather than relying on the BAT/ Market-wide Derogation to enable the cheapest deals to be made available to them).

Final decision

2.18. We are grateful for all responses provided by stakeholders on the future of the BAT post March 2025 as part of this consultation.

2.19. While we note concerns from some consultation respondents on this point, on balance we still consider that our position on retaining the BAT supports consumers' interests through its anticipated positive impact on consumer trust and its ability to better support inactive and vulnerable customers (through enabling existing customers to access own-supplier deals). We consider that the BAT will also continue to provide 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 as part of a more stable market. Furthermore, it is our view that retaining the BAT until this time will also allow Ofgem to keep a basic level of consumer protection whilst wider decisions on the direction of the future retail market are considered.

2.20. We acknowledge continued concerns from some stakeholders that retaining the BAT may result in higher prices for active consumers in the short term, and we are mindful of calls to remove the BAT in order to reduce these costs. However, we remain persuaded of the arguments made in favour of retaining the BAT as part of our previous consultation and consider that the benefits of retaining the BAT beyond March 2025 (as set out in our proposals) would be in the overall interests of consumers. We will continue to keep its effects on competition and the market under review and will take this into account when assessing the impacts and desirability of the BAT as an enduring market measure and in relation to the interests of consumers.

2.21. The existing renewal mechanism in SLC 22B allows for the BAT to be extended on an annual basis. Retaining the BAT until at least March 2026, and thus avoiding suppliers and market participants from facing uncertainty around whether or not the BAT will be extended at each annual anniversary, will in our view also help to provide industry with some consistency and clarity until longer term decisions are made on its future role in the market.

2.22. For the avoidance of doubt, this decision represents our written statement to extend the Ban on Acquisition-only Tariffs for a further year until 31 March 2026.

3. Extending the Market-wide Derogation beyond 31 March 2025

Section summary

Further to our Policy Consultation, we have decided to also extend the Market-wide Derogation for a further 12 months until 31 March 2026. This section summarises stakeholder feedback to our proposals and sets out the reasons for our Decision to extend the Market-wide Derogation until this date.

Q4.	Are there any other factors which should be considered when looking at the impact of the Market-wide Derogation on the market?
Q5.	Do you agree with our proposal to retain the Market-wide Derogation until March 2026, and our reasons therein supporting our proposal?
Q6.	Would you recommend any changes to the operation of the Market-wide Derogation (assuming that it was being retained for the longer term)?

Our proposals

3.1. The Market-wide Derogation from SLC 22B enables suppliers to offer bespoke 'retention-only' deals to their existing customers who are reaching the end of a fixed term contract[4]. The current Market-wide Derogation from SLC 22B expires on 31 March 2025, i.e. the same time as the BAT expiry, unless the BAT is renewed using the existing renewal mechanism in SLC 22B.

3.2. In our policy consultation, we proposed to extend the Market-wide Derogation for a further year until 31 March 2026. The basis of our proposal to extend the Market-wide Derogation was centred on principles of fairness, consumer interest and market competition.

3.3. On the principle of fairness, consideration was given to whether it was deemed unfair that retention-only deals of this kind should only be available to one set of customers (i.e. existing customers) and not available to others. This argument focused on the balance between what was deemed economically logical (i.e. allowing cheaper-to-serve existing customers to benefit from tariff savings through cheaper

[4] Market-wide Derogation Direction and Decision letter, 7 April 2022 - [Decision - Derogations from SLC 22B – requirement to make all tariffs available to new and existing customers | Ofgem]

tariffs) versus the concept of fairness with all deals being available to all customers. In addition, it was explored whether the presence of a Market-wide Derogation would indirectly facilitate price discrimination within the base of a supplier’s existing customers, where customers more likely to switch are offered more favourable tariffs.

3.4. On consumers and competition, consideration was given to whether the Market-wide Derogation was unhelpful to consumers, or to market competition, in some significant way. Potential issues included market stagnation owing to the ‘tie up’ of existing customers to deals which the competitive market cannot rival. We highlighted the need to balance this alongside the potential positive impacts on vulnerable or heavily indebted customers who struggle to switch supplier and could therefore stand to benefit from cheaper retention-only tariffs. Alongside this was a concern around the transparency of retention-only deals to the rest of the market. Whilst this was not considered to be a significant issue in recent years owing to a relatively low number of customers on fixed term tariff deals, its impact was anticipated to increase with the likely future increase in these deals on the market.

3.5. We also clarified that our proximity to the wholesale price crisis and the relatively small number of fixed term contract deals available meant that there is currently negligible real-world evidence on the Market-wide Derogation’s impact (or potential impact) on the retail market.

3.6. On balance, however, we considered that our proposal to extend the Market-wide Derogation until 31 March 2026 supports the interests of consumers, particularly in terms of impacts on consumers and competition, notwithstanding these uncertainties, in the ways highlighted above.

3.7. In light of the known uncertainties around the benefits and trade-offs of the Market-wide Derogation, however, we clarified that our proposal to extend was not as strongly held as our proposal to extend the BAT for another year.

3.8. With that in mind, we invited feedback from stakeholders on each of the points raised above, with a view 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. Furthermore, we noted that if there is sufficient evidence that the derogation actively cuts across the principle of fairness in the market, or that it has a significant detriment to competition and consumer interests in the coming year, we may yet seek to remove it when the BAT is extended further from April 2025.

Stakeholder feedback

Suppliers

3.9. Of the 9 suppliers that provided feedback on the Market-wide Derogation, all of them agreed that it should be extended for another year alongside the BAT.

3.10. Suppliers generally agreed with our proposals to extend the Market-wide Derogation to help foster long-term relationships based on trust between the customer and supplier and to allow existing customers (particularly those who are vulnerable and/or in debt and unable to switch) to get the best possible deals. They also agreed with the overall arguments on fairness in ensuring that lower cost-to-serve existing customers should reap the benefits of cheaper prices. Whilst some suppliers appreciated the concerns raised in our consultation document around fairness, it was considered that these should be viewed alongside the broader market/business factors at play – namely supporting market stability and promoting fairness to existing customers.

3.11. One supplier submitted evidence to suggest that the Market-wide Derogation had a large role in allowing suppliers to offer fixed tariffs to customers while switching costs were high as a result of the MSC. It was noted that these were offered to new customers too, when switching costs dropped. In increasing the availability of tariffs, they stated that the Market-wide Derogation had an overall positive impact on consumer choice and the market.

3.12. One of the risks noted was that, whilst the Market-wide Derogation may help contribute to the development of innovative products and services (e.g. Time of Use tariffs) and may allow for improvement in the stability and quality of service provision, we need to be mindful of risks relating to potential delays in advancement of innovative tariffs alongside distributional impacts on consumers who need additional support. It was noted that these risks should be factored in when considering changes to its existing form and review of its role on a longer-term basis.

3.13. In relation to concerns around transparency of retention deals and the risk of deals being targeted only to those that would be likely to switch, one supplier noted that we should change existing rules to prevent practices that are not within the spirit of the rules – either by issuing guidance or amending the current derogation.

3.14. Further, one supplier picked up that suppliers are already obligated under SLC 31 F.11 to publish details of all their operational tariffs, which includes both retention deals for sale and no longer for sale but still supplying existing customers. On this note they also raised concerns about suggestions to share data with TPIs/PCWs as unregulated entities.

3.15. One supplier agreed that whilst the Market-wide Derogation should be extended for another year, Ofgem should use this period to determine how best to update the core BAT regulation in order that this was fair for all – and therefore not require segregation via a Market-wide Derogation. This supplier also noted that Ofgem should take into account internal switching, not just external switching, as a factor of effective competition. They further stated that our current approach fails to account for a significant portion of customer engagement, where consumers switch between products with their own supplier, rather than looking for better deals with new suppliers.

3.16. It was also suggested that the Market-wide Derogation should be amended to include cross-selling of fuels, e.g. where a supplier can offer attractive deals on secondary fuels to customers, contingent on them already being a single fuel customer.

3.17. Three suppliers noted that we should incorporate the Market-wide Derogation in core licence conditions and not keep it as a separate derogation.

3.18. Others agreed that whilst there were no significant impacts on fairness or competition at present, this should be kept under further review in the context of Ofgem considering a potential enduring version of the BAT. One supplier suggested that we hold biannual reviews to include monitoring of wholesale costs, customer debt and economic landscape.

Consumer/charity groups

3.19. The one consumer group that responded on these questions agreed with our proposal to extend the Market-wide Derogation alongside the BAT but requested further clarity on the definition of existing customers. They called for the definition to include 'length of time' serving as an existing customer owing to impacts on new homeowners/tenants and to ensure that it does not focus on propensity to switch/any other factor of being more or less vulnerable. They also requested that retention-only deals should be made accessible to all customers – including through duty to publish tariff information in compliance with Supply Licence Condition 31F.11. They suggested that these changes are made through amendments to existing derogation direction or via clarification via SLC 0 requirements.

Third party intermediaries and price-comparison websites (PCWs)

3.20. The one PCW which responded to this did not support further extension of the derogation. They urged Ofgem to consider the ability of suppliers to offer retention tariffs without any competitive pressure or checks. They also urged suppliers to make all current tariffs (including retention only tariffs) available to accredited price comparison websites.

Final Decision

3.21. Once again we acknowledge and appreciate the range of responses from stakeholders on both the operation of the Market-wide Derogation at present and suggestions for proposed future amendments to best accommodate consumers and the market.

3.22. There was an overall agreement on our proposal to extend the Market-wide Derogation alongside the BAT until at least 31 March 2026. However, we are mindful of stakeholder consensus on the need to carefully consider how this is amended to best deliver effective outcomes for consumers. Our final decision is therefore to extend the Market-wide Derogation until at least 31 March 2026. That is, the Directions (to Gas and Electricity Licensees respectively) that provide for the Market-wide Derogation from SLC 22B, and that have been in force since 14 April 2022, remain unchanged.

3.23. As outlined in our Policy Consultation, notwithstanding the lack of real-world evidence on the Market-wide Derogation's impact (or potential impact) on the retail market, we consider that our reasons to extend it for another year support the interests of consumers, particularly in terms of impacts on consumers and competition.

3.24. 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.

3.25. 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.

3.26. 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 with greener tariffs and improve quality of service, given the certainty in their customer base for the longer term.

3.27. Extension of the Market-wide Derogation for another year will also enable further scrutiny of the measure in practice, amidst the likely increase in fixed term contracts compared to the previous few years in which it operated.

3.28. Whilst we note that all these points were supported by stakeholders in their responses, we also note concerns about the transparency of retention-deals on the market and different positions on this. We acknowledge these concerns and will endeavour to work with suppliers and industry over the coming year to ensure that there is clarity on existing rules. We will also take into consideration the wealth of suggestions on ways to improve and amend the Market-wide Derogation over the coming year.

4. Potential long-term changes to the BAT

Section summary

In this section we have summarised any feedback received on potential future changes to the BAT, if it were to be retained as an enduring measure.

Questions

Q7. Are there any 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.

Our proposals

4.1. Aside from our proposals to extend the current temporary version of the BAT, and the Market-wide Derogation, for the reasons outlined in previous sections, we are also actively considering the prospect of an enduring BAT as part of ongoing work on the future of retail pricing. A decision on whether to retain the BAT permanently will be made at a later date and in the context of this wider work. In the meantime the ability to observe the BAT in less volatile market conditions over the coming year will help us to assess its merits as a feature of the market.

4.2. In line with this, our Policy Consultation sought stakeholder feedback on any possible amendments to how the BAT functions, in order that it operates as robustly, efficiently and transparently as possible, whilst meeting the needs of future domestic consumers.

4.3. On operational improvements, we acknowledged that the current version of the BAT, as designed, had sought to restrict unsustainable market growth and related market practices in order to prevent another supplier collapse as seen during the gas crisis. In line with markets changing, however, and a significant reduction in the stability risks that the BAT was introduced to tackle, we noted that alternative approaches to regulate sustainable market growth may be viable. On this basis we sought stakeholder feedback on possible innovative options which foster greener market growth, whilst also protecting the interests of future domestic consumers.

4.4. We also sought stakeholder feedback on other practical or operational issues that the BAT may cause which industry may be aware of and Ofgem is not sighted on.

4.5. Further, we made it clear that in seeking feedback on this, it does not presuppose any decision on whether the BAT will be retained as an enduring feature of the market.

Stakeholder feedback

Suppliers

4.6. One supplier noted that Ofgem should rewrite rules for BAT and supporting licence conditions and in doing so, remove the need for separate derogations and guidance. They also suggested that Ofgem improve market monitoring to include more competition indicators such as internal switching and requested that Ofgem resumes publication of external and internal switching statistics to increase transparency of market engagement.

4.7. Two suppliers called for more proactive monitoring of current BAT compliance and requested tougher enforcement sanctions where rules were not met.

4.8. Another supplier also requested that Ofgem provide more clarity around using different sales channels to offer tariffs to customers. In addition, we received a variety of views on banning introductory tariffs, the use of vouchers and refer-a-friend-type deals.

Consumers and charity groups

4.9. It was agreed that offering cash-based incentives for switching is problematic when such incentives cannot be taken up by all customers (e.g. those who cannot or are less able to switch). As such, responses noted that cash-based incentives risked favouring those that arguably needed less support (and being subsidised in so doing by more vulnerable and indebted customers). However, it was argued that contingent discounts (e.g. refer-a-friend deals) could still work and favour all.

Third party intermediaries and price comparison websites (PCWs)

4.10. Respondents argued that we should remove the ban on all introductory offers, to encourage suppliers to refocus efforts on business acquisition.

4.11. It was also noted that Ofgem should consider allowing exclusive tariffs to new customers to incentivise the uptake of greener tech and to those that are vulnerable in rural areas.

4.12. Separately, respondents also noted that Ofgem should take the regulatory landscape for TPIs into account, highlighting the Goverment's outlined intention to introduce a General Authorisation Scheme to govern TPIs including PCWs and the possibility that Ofgem may become the regulator for TPIs within the energy industry.

Final Decision

4.13. We are very grateful for the range of feedback from different groups of stakeholders on the potential future changes to the BAT. These have been both innovative and thoughtful and will prove invaluable in helping to shape the future of the scheme.

4.14. As outlined in the Policy Consultation, we consider that the BAT is meeting its overall purpose and do not plan to make immediate changes to it in its current temporary state. Instead, the proposed amendments to the BAT that consultees have provided will be considered as we take forward our decision-making on whether the BAT should be made permanent and any development of a permanent version thereafter.

4.15. We acknowledge that there are areas where the BAT's existing rules could be further clarified to reduce ambiguity further. We appreciate the importance of this point and are grateful for comments provided in relation to it. We have aimed to clarify the existing rules with a further expectations letter to suppliers which will shortly be distributed to Regulatory Directors. This aims to set out our interpretation of the existing rules in relation to welcome offers for new customers and provide further clarity on how we expect the BAT to be applied in relation to these.

4.16. To be clear, this letter aims to complement rather than replace our March 2023 expectations letter to suppliers on the same issue; we strongly encourage suppliers to continue to observe this in the meantime.

5. Next steps

5.1. Further to our Policy Consultation and stakeholder feedback, this Decision confirms that we are extending the BAT until 31 March 2026 using the existing renewal mechanism within SLC 22B. The Directions (to Gas and Electricity Licensees respectively) that provide for the market-wide derogation from SLC 22B, and that have been in force since 14 April 2022, remain unchanged.

5.2. To confirm, there will therefore be no licence modifications required to SLC 22B for both gas and electricity domestic suppliers in order for this Decision to take effect.

5.3. Any subsequent changes required to SLC 22B in light of future of price protection policy development will be taken into consideration separately at that time.

5.4. For clarity, this document should be taken as our written statement to extend the BAT for another 12 months using our existing licence powers.

Compliance with SLC 22B

5.5. The BAT is a temporary policy measure, set out in SLC 22B for both electricity and gas supply licences.

5.6. Should we choose to make the BAT 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 consumer. In Chapter 4 of this Decision document, we explored areas where the BAT could be improved/refined in any future enduring iteration of the policy measure.

5.7. Under the current, temporary BAT SLC 22B, which has now been extended until 31 March 2026 as per this Decision document, we remain clear that this SLC remains in place until any future changes to the BAT go live, pending our Decision on the Future of the BAT.

5.8. As such, any offers and promotions that are provided exclusively to new customers, or that are caught by the definition of 'Tariff', would continue to be in breach of SLC 22B. This is consistent with our most recent expectations letter which will be issued to suppliers, which reinforces our position provided to suppliers in March 2023.

5.9. We expect suppliers to operate within the rules and remain committed to ensuring that scheme compliance is adhered to, with robust governance measures in place to monitor and take action on non-compliance.