

By email: priceprotectionpolicy@ofgem.gov.uk
6 November 2024

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

Dear Retail Policy Team

Thank you for the opportunity to respond to this consultation. Please find our responses to your specific questions in Appendix A.

We welcome the proposal to extend the BAT for an additional 12 months beyond 2025. We fully support this extension and advocate for a revised, future-proofed BAT to become a permanent feature in the market.

Our customers clearly desire this change, with a significant majority (80-90%) expressing that it is unfair to be excluded from their supplier's best deals. Market data shows that competition is thriving with the BAT in place¹—rather than hindering it, the BAT is fostering healthy competition that benefits all customers, not only those who frequently switch suppliers.

We urge Ofgem to establish a permanent BAT that removes the need for unpublished supplier guidance or derogations for offering better deals to loyal customers. To support this, we have included proposed licence drafting in Appendix B.

Additionally, we encourage Ofgem to monitor and recommence publishing data on internal switching², as all evidence suggests that 2-3 times more customers choose to switch within their current supplier for a better deal than to a new supplier. This is an important metric to assess market competition against. The BAT enables more customers to benefit from competition by ensuring that existing customers can access their supplier's best deals.

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<https://www.bfygroup.co.uk/blog/domestic-customer-switching-jumps-to-highest-level-since-energy-crisis>

² <https://www.ofgem.gov.uk/energy-data-and-research/data-portal/retail-market-indicators>

We have concerns regarding Ofgem's interpretation of the BAT rules. Ofgem's communication from 25 November 2022 suggests a rigid approach, emphasising a uniform consumer experience across various sign-up channels. However, it is unnecessary and potentially harmful to require that all tariffs be accessible through all channels. Mandating universal availability could hinder the intended consumer benefits and inadvertently affect market competition.

Specifically, making all tariffs available across channels could lead to consumer risks, such as third-party mis-selling as complex smart tariffs, which involve nuanced features like plunge pricing or load-shifting rewards, may not be suitable for all channels, particularly unregulated third parties or price comparison websites (PCWs). Such a requirement could stifle innovation, as new tariff models might be restricted to the capabilities of the least flexible channel. Additionally, enforcing this would conflict with Ofgem's Confidence Code, which currently allows PCWs the discretion to display tariffs selectively, fostering differentiation.

In parallel we suggest you progress your work (with DESNZ) to consider the future of the price cap. We need continued price protection to address the "squeeze" element of the "tease and squeeze" problem. A permanent BAT can exist alongside the price cap as they meet different goals - the BAT helps end the "tease" of tease and squeeze, and the cap ends the "squeeze" on customers who don't switch. New challenges mean this price protection will need to evolve over time. In particular, with the increasing number of customers on smart TOU tariffs, we need to consider whether a single rate default tariff is the best protection.

Kevin Hammond
Head of Regulatory Compliance
Octopus Energy

Appendix A

Octopus Energy response to consultation 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?

Yes. We support the need for a Ban on Acquisition Tariffs (BAT). However it is clear that the current BAT regulation cannot continue indefinitely in its current form.

In our previous response, which supported a temporary extension of the BAT, we noted that **independent surveys indicate that the majority of people (80-90%) believe it is unfair to exclude customers from their supplier's best deals**. The BAT rules and supporting licence conditions should be rewritten to achieve what our customers overwhelmingly tell us they want the market to deliver.

It is our view that Ofgem should extend the BAT, and use the time to consult on new rules. We attach some proposed drafting which will remove the need for derogations and guidance for lower priced loyalty deals. By extending the BAT Ofgem has the opportunity to bring in enduring regulations which protect and enable better outcomes for loyal and disengaged customers.

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

We agree that the BAT has provided protection for vulnerable and indebted customers during and since the energy crisis. The BAT has been an important part of maintaining consumer trust by way of ensuring that suppliers in the market did not resume the race to the bottom through offering high-risk unsustainable acquisition-only deals.

The most recent [market data from BFY Group](#) shows that switching is now at its highest level since the energy crisis, with circa 290,000 switches in September 2024. Though still not at pre-crisis levels, this demonstrates that customers are engaged in external switching without needing acquisition only deals to convince them to switch.

There is now an opportunity to use an extension of the current BAT rules to:

- Devise a future-proof licence that doesn't require derogations,
- Improve Ofgem's market monitoring to cover more competition indicators such as internal tariff switching levels, and
- Consider the future of price protection.

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

Ofgem should consider internal switching and genuine customer loyalty when assessing extending the BAT. We call on Ofgem to resume publishing statistics on external and internal customer tariff switching on its Data Portal, which would increase transparency into the amount of true market engagement.

As we articulated in our previous response, the increasing numbers of customers switching prove that the BAT has not had an adverse effect on competition. In recent months under the BAT, we have seen increased engagement and switching from customers, while existing customers are protected from being excluded from their supplier's cheapest deals. Market analysis from BFY shows that 290,000 customers switched supplier in September 2024, the highest level since the energy crisis³.

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?

The core licence regulation itself should be fair and allow for fair customer outcomes without requiring market-wide derogations.

The retail energy market should not be designed to only reward active switchers. It's fair that suppliers are able to offer bespoke retention-only deals to their customers. Consumers in other markets enjoy the benefits of loyalty deals, for instance the use of membership-based loyalty rewards used in everything from Amazon Prime⁴, to coffee shops⁵ and theme parks⁶.

Accordingly, we support the retention of the market-wide derogation while the current BAT is in effect. However, we would like Ofgem to use the time provided by extending the BAT to consult on options for a robust and enduring licence condition which does not require additional derogation or guidance.

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

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<https://www.bfygroup.co.uk/blog/domestic-customer-switching-jumps-to-highest-level-since-energy-crisis>

⁴ <https://www.amazon.co.uk/amazonprime>

⁵ <https://www.greggs.co.uk/app>

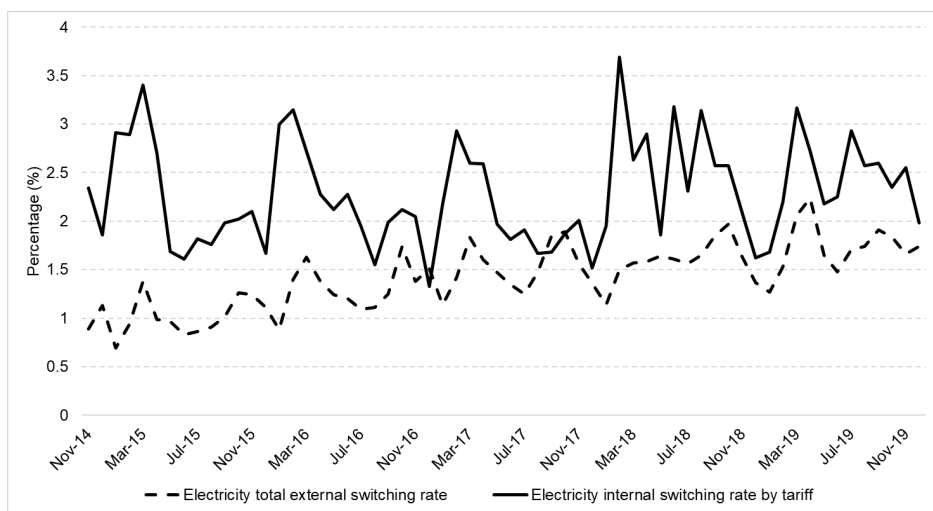
⁶ <https://www.merlinentertainments.biz/merlin-pass>

competition within the retail market? Please provide supporting evidence wherever possible.

The market-wide derogation has had a positive effect on consumers, as it means that a customer does not need to be actively switching suppliers to benefit from cheaper tariff offers. The market-wide derogation should be retained alongside any extension of the BAT to March 2026.

Ofgem continues to assess the effectiveness of competition using external switching as a key measure of success. This 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.

The graph below shows that internal switching has historically been as much as twice as high as external switching. Over the period, internal switching was over 60% higher than external switching.



As we noted in our previous consultation response, Ofgem has not updated its published statistics on internal switching since 2019. Ofgem collects this data every month from suppliers as part of the Financial Responsibility Principle RFI.

Customers should be able to expect that a supplier is able to reward their loyalty. The market-wide derogation enables a supplier to deliver those positive outcomes for its existing customers.

Q6. Are there any other factors which should be considered when looking at the impact of the Market-wide Derogation on the market?

Ofgem should publish internal switching of customers to alternative deals offered by their existing supplier.

Competition in the market should be considered in ways more broadly than simply measuring customer switching between suppliers. Ofgem needs to consider the preference for loyal customers to internally switch tariffs with their existing supplier to develop a deeper understanding of customers who have benefitted from the BAT rules and market-wide derogation.

Ofgem should resume publishing statistics on external and internal customer tariff switching on its Data Portal, which would increase transparency into the amount of true market engagement.

Q7. Do you agree with our proposal to retain the Market-wide Derogation until March 2026, and our reasons therein supporting this proposal?

Yes. However, Ofgem should use that time to consult on a permanent BAT which incorporates the advantages of the market-wide derogation in the core licence conditions.

We set our proposals for this in Appendix B, along with the additional benefits these will provide.

Q8. Would you recommend any changes to the operation of the Market-wide Derogation (assuming that it was being retained for the longer term)?

We would not need the market-wide derogation if the core regulation was reformed to work effectively in the current retail market.

Ofgem should use the extension of the BAT to consult on new enduring licence conditions which incorporate the benefits of the market-wide derogation for a supplier's existing customers. We've included some suggestions on how this could work in Appendix B.

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.

We recognise that the present BAT is not perfect, and relies on the market-wide derogation and supplier guidance letter.

We have concerns with how Ofgem's enforcement team has interpreted the BAT. Ofgem's letter of 25 November 2022 states that the regulator's firm stance is that the consumer experience should be consistent across different signing up channels, and consumers should not be presented with a different tariff offering based solely on the method they use to enquire about tariff options.

Ofgem should not require all tariffs to be made available through all channels. This would not be appropriate, as a requirement to do so would introduce the following consumer harm and adverse effect on competition:

- **Third party mis-selling:** Smart tariffs require licensees to ensure that customers understand potentially complex features and benefits, such as plunge pricing, rewards for load shifting, dynamically priced tariffs where customers with import/export tariffs and battery storage can charge and discharge based on pricing signals. It would not be appropriate to mandate that these tariffs must be made available through all third party sales channels, such as unregulated auto-switching sites and PCWs.
- **Limiting innovation:** Innovation would only be able to occur at the speed of the least flexible sales channel. If a sales channel was not able to offer a tariff appropriately, a supplier would not be able to offer that tariff through any other sales channel.
- **Compatibility with Ofgem's Confidence Code:** Requirement two of the Confidence Code gives the PCW discretion about whether it shows tariffs which are for meters other than single rate and economy 7. This enables a PCW to differentiate its offering from that of other PCWs. A licence requirement that mandated all tariffs were available through all channels would require modification to the Confidence Code.
- **Reduced benefits from competition:** There would be significantly reduced commercial benefits for a supplier to offer retention tariffs if those tariffs were also available through auto-switching sites and PCWs.

Appendix B

Proposed new licence conditions

New BAT licence condition

22B.1 When the licensee offers to enter into a Domestic Supply Contract with a Domestic Customer, the Licensee must treat that customer fairly.

22B.2 In complying with 22B.1, the Licensee shall use all reasonable endeavours to make all its Live Evergreen Tariffs and Live Fixed Term Tariffs available to existing Domestic Customers through one or more of the Licensee's direct sales channels.

22B.3 For any direct sales channel where the licensee does not make all its Live Evergreen Tariffs and Live Fixed Term Tariffs available to existing Domestic Customers, it must inform customers:

- (a) that all the Licensee's Live Evergreen Tariffs and Live Fixed Term Tariffs are available through a different sales channel, and
- (b) how to access that sales channel.

22B.4 At the End of a Fixed Term Contract, the Licensee must make all its Live Evergreen Tariffs and Live Fixed Term Tariffs available to its existing Domestic Customer, subject to eligibility criteria provided that the criteria do not in any way relate to whether or not the Domestic Customer is a new or existing Domestic Customer.

Why propose these modifications in this way?

The first paragraph sets out the overarching principle to treat each Domestic Customer fairly specifically at the point where the licensee offers to enter into a domestic supply contract. This builds on the existing SLC 22.2 requirement to offer to enter into a contract on request from a Domestic Customer. The paragraph is phrased so that compliance is expected in respect of each domestic customer.

The second paragraph reinforces the overarching principle by specifying that the licensee shall use all reasonable endeavours to make its Live Evergreen Tariffs and Live Fixed Term Tariffs available to existing customers. This modifies the existing requirement to make all tariffs available to new and existing customers and has the following benefits:

Benefit 1

This removes an issue with the drafting of the current SLC 22B, that the defined term “Tariff” means 22B applies to Deemed Tariffs, which by their nature cannot be expressly entered into as they only apply where a customer has not expressly entered into a supply contract. Using the definitions of Live Evergreen Tariffs and Live Fixed Term Tariffs resolves that drafting issue.

Benefit 2

Using the existing definitions of Live Evergreen Tariffs and Live Fixed Term Tariffs removes the need to carry the separate SLC 22B.2 exceptions for Closed Tariffs, Collective Switching Tariffs and Dead Tariffs.

Benefit 3

Introducing a requirement to use all reasonable endeavours allows for compatibility with the principles-based SLC 25.3 and 25.5 obligations to take into account and ensure that the licensee only recommends tariffs which are appropriate to the Domestic Customer’s characteristics and/or preferences. “Reasonable endeavours” is not intended to dilute the ambition of this regulation; quite the opposite, it is meant to ensure that the licensee makes an effort not to bamboozle a customer with all its tariffs, when some may not be appropriate for that customer.

Benefit 4

The drafting of the paragraph requires that a licensee must ensure that all its tariffs are available through at least one direct sales channel. This is not currently a requirement, and so licensees may currently have different portfolios of tariffs available through different sales channels with no single point of engagement for a customer trying to make an informed choice. For example, this may mean that digitally excluded customers who use a supplier’s telesales channel may not have any awareness that tariffs with different features and benefits may be available online.

However, it is not appropriate for a supplier to make all tariffs available through all channels, as a requirement to do so would introduce the following consumer harm and adverse effect on competition:

- **Third party mis-selling:** Smart tariffs require licensees to ensure that customers understand potentially complex features and benefits, such as plunge pricing, rewards for load shifting, dynamically priced tariffs where customers with import/export tariffs and battery storage can charge and discharge based on pricing signals. It would not be appropriate to mandate that these tariffs must be made available through all third party sales channels, such as unregulated auto-switching sites and PCWs.

- **Limiting innovation:** Innovation would only be able to occur at the speed of the least flexible sales channel. If a sales channel was not able to offer a tariff appropriately, a supplier would not be able to offer that tariff through any other sales channel.
- **Compatibility with Ofgem's Confidence Code:** Requirement two of the Confidence Code give the PCW discretion about whether it shows tariffs which are for meters other than single rate and economy 7. This enables a PCW to differentiate its offering from that of other PCWs. A licence requirement that mandated all tariffs were available through all channels would require modification to the Confidence Code.
- **Reduced benefits from competition:** There would be significantly reduced commercial benefits for a supplier to offer retention tariffs if those tariffs were also available through auto-switching sites and PCWs.

Paragraph three introduces an important consumer protection currently absent from the licences. It requires clear and prominent signposting on any sales channel where all the licensee's Live Evergreen Tariffs and Live Fixed Term Tariffs tariffs are not available. The message must be clear, in a prominent place and tell the customer where and how they can find all the licensee's live tariffs.

Paragraph 4 ensures that customers who are at the end of a Fixed Term Contract have the licensee's full portfolio of tariffs available to them, subject to eligibility criteria. This is not mandated in the current BAT licence condition.

Octopus Energy

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