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Dear Daniel

STATUTORY CONSULTATION ON THE FUTURE OF THE BAN ON ACQUISITION-ONLY TARIFFS (BAT) BEYOND MARCH 2025

Thank you for the opportunity to respond to Ofgem's statutory consultation on extending the Ban on Acquisition Tariffs (BAT) beyond 31 March 2025. We welcome the proposal to extend the BAT. Our answers to the consultation questions are in Annex 1 attached. However, we would like to highlight the following points:

- The proposed extension will ensure continued consumer protection and market stability during a period of transition in the retail energy market. The BAT has played an important role in preventing market distortions caused by suppliers offering 'teaser' tariffs to new customers while excluding existing customers, leading to a "loyalty penalty". It is appropriate to extend the BAT whilst long-term decisions on the future of price protection and the retail energy market are made and implemented. We support Ofgem's aim of providing clarity and certainty to both suppliers and consumers during this period.
- The Market-wide Derogation which allows suppliers to offer bespoke retention-only deals is consistent with the aims of the price cap, supports the goal of addressing the loyalty penalty, and promotes the principle of consumer fairness within the retail market. It is clearly in the interest of consumers that savings can be passed on them through targeted retention deals. This will facilitate more effective competition and rivalry in the longer term.

Yours sincerely,



Richard Sweet
Director of Regulatory Policy

STATUTORY CONSULTATION ON THE FUTURE OF THE BAN ON ACQUISITION-ONLY TARIFFS (BAT) BEYOND MARCH 2025 – SCOTTISHPOWER RESPONSE

Section 2. Extending the BAT beyond 31 March 2025

Question 1: 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 agree with the proposal that the BAT should be extended for another 12 months post its current expiry date of 31 March 2025. The BAT helps to maintain market stability and to some extent also delivers customer price protection. This stabilising influence is particularly valuable in the context of ongoing work on the future of price protection. A longer extension would bring further reduction in regulatory risk, facilitating investment and innovation in retail markets.

Question 2: Do you agree with the reasons set out in this section supporting our proposal to extend the BAT until 31 March 2026?

We agree with the reasons provided in the consultation for extending the BAT until 31 March 2026. Specifically, we recognise the importance of:

1. Vulnerable and Indebted Customers:

We agree with Ofgem's assessment that removing the BAT is not in the interest of customers who face barriers to switching suppliers. It would not be fair for financially vulnerable customers with debt to be effectively subsidising acquisition only deals, which they are unable to access. In maintaining the BAT, the risk of these customers disproportionately bearing higher costs, while active consumers benefit from acquisition-only deals, is mitigated.

2. Consumer Trust and Vulnerable Customers:

Consumer trust is particularly important as we work to deliver smart solutions and the responsive retail market of the future. The BAT promotes trust in the markets, which gives customers the confidence to engage. The consultation rightly highlights that the removal of the BAT could undermine trust, particularly among existing customers who would perceive exclusion from their supplier's most favourable tariffs as inequitable.

3. Opportunity to observe the BAT's functioning within a more stable market:

We agree that extending the BAT offers a valuable opportunity to evaluate its effectiveness in a more stable market environment and will improve the robustness of any conclusions drawn.

4. Minimum Capital Requirement:

We support the notion that retaining the BAT will provide consistency and stability as new financial resilience measures, including the Minimum Capital Requirements for suppliers, are introduced from March 2025. During this period of adjustment, the extension of the BAT will help to mitigate the risk of adverse market behaviours, such as aggressive customer acquisition practices, that could undermine the intended benefits of these new regulatory measures. Maintaining the BAT will therefore contribute to a smoother transition towards a more resilient and stable retail market.

Question 3: Are there any other factors which Ofgem should consider, when determining whether or not the BAT should be extended post March 2025?

Removal of the BAT would add unnecessary costs into the retail market and increase average prices to consumers. Compared to a situation where the BAT remains in place, widespread use of acquisition-only tariffs will result in fewer internal switches (ie switching tariff but not supplier) and a greater volume of external switches, typically mediated by Price Comparison Websites (PCWs) or Third Party Intermediaries (TPIs) for a fee. We observed that the evaluation of this factor was not included in the previous May 2024 assessment of the BAT. Therefore, it is crucial to consider this in future impact assessments to ensure a comprehensive understanding of market dynamics and consumer impact.¹

The increased proportion of external switches will mean higher costs in TPI/PCW fees for the same overall volume of switching. This will represent an inefficiency or deadweight loss for the overall system, the cost of which will need to be recovered from customers. Furthermore, removal of the BAT will allow TPIs/PCWs to negotiate exclusive tariffs, which harm price transparency and may not be aligned with consumer interests.

Ofgem should also consider the benefits of the BAT for developing innovative time-of-use (ToU) tariffs, which we expect to be a feature of the future retail market. Without the distraction of acquisition-only tariffs, suppliers will be incentivised to focus on creating competitive long-term solutions that provide real value to consumers and support the wider energy system. In addition, without the BAT suppliers may be incentivised to focus on acquisition time of use tariffs aimed at the more valuable engaged customers, leaving behind the less engaged, often more vulnerable customers.

ToU and dynamic pricing tariffs enable consumers to adjust their energy consumption to off-peak times, reducing strain on the grid, improving energy efficiency, and allowing for better integration of renewable energy sources. This will not only lead to more competitive offerings for consumers but also contribute to broader grid stability and the UK's net zero objectives.

Additionally, we recognise that tariff interoperability—currently being advanced by the DESNZ-led Tariff Interoperability Working Group—is set to play a significant role in driving future market competition. With a more transparent and accessible market, consumers can easily switch between suppliers and benefit from innovative tariff structures. The BAT's continued presence, combined with work on tariff interoperability and wider innovation, will ensure that competition in the retail energy market centres around meaningful, sustainable offers rather than simplistic teaser tariffs.

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

Question 4: 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?

We consider 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. Retention tariffs are valuable in developing the longer term supplier-customer relationships which will be increasingly needed in a world of market-wide half hourly settlement where more customers will be in a position to offer demand-side response.

¹ [Statutory Consultation on the Future of the Ban on Acquisition-only Tariffs \("BAT"\) \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/statutory-consultation-on-the-future-of-the-ban-on-acquisition-only-tariffs)

The price cap was motivated in part by concerns regarding a loyalty penalty in retail markets. Offering low prices to existing customers could be seen as a reward for their loyalty. The ability to offer bespoke retention-only deals also allows suppliers to ensure the terms and conditions of a retention-only offer are relevant to the customer and their circumstances (as required by SLC 25).

Question 5: 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.

It is in consumer interests that savings can be passed on through targeted retention deals. This is likely to facilitate more effective competition and rivalry in the longer term, in contrast to the “tease and squeeze” approach often observed before the significant collapse of the energy supply market in 2021.

Note that a recent government policy paper concluded that while barriers to switching should be kept low, “consumers should be able to have longer term – and mutually beneficial – relationships with their energy suppliers.”² This reflects the fact that value for consumers goes beyond an ability to access the latest short-term cut-price deal.

We agree with Ofgem that the derogation’s effect on competition in the near term is likely to be minimal. In the longer term, it is likely to be positive as bespoke retention tariffs can support innovation in retail markets.

Question 6: Are there any other factors which should be considered when looking at the impact of the Market-wide Derogation on the market?

Ofgem notes that “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.” (paragraph 3.15). Although we do not object to sharing retention-only tariffs, we have several concerns regarding Ofgem’s justification of this approach.

- Ofgem states that there is no rule requiring suppliers to make retention-only deals public or available to TPIs/PCWs. However, these are already accessible, as suppliers with websites are obligated under SLC 31F.11 to publish details of all their Operational Tariffs. This includes any retention tariffs available for sale or those no longer available for sale but still supplying existing customers. In the current environment, we expect all suppliers to have websites and thus be subject to this obligation, ensuring all tariffs, including retention-only fixed-term tariffs, are available.
- Ofgem argues that customers may find it difficult to compare retention tariffs against rival offerings. However, given the publication requirement mentioned above, it is unclear why this argument applies solely to retention tariffs. We believe the availability of tariff data for comparison purposes is crucial for all tariffs.
- It seems that differing views may arise from the perceived role TPIs/PCWs have played in providing tariff comparisons. We are concerned that Ofgem suggests the absence of retention tariffs on TPIs/PCWs is due to suppliers not providing the data. From our experience, the absence of retention-only tariffs on TPIs/PCWs often results from these sites not supporting customers in choosing such tariffs. We advise against Ofgem obligating suppliers to provide customer data to TPIs/PCWs, especially as these operate

² [Delivering a better energy retail market: a vision for the future and package of targeted reforms \(HTML\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/delivering-a-better-energy-retail-market)

as unlicensed entities. We remain concerned about the emphasis placed on TPIs/PCWs, given the inherent increased costs they introduce to the market. We suggest that Ofgem exercise caution in promoting these sites as part of the BAT assessment.

Question 7: Do you agree with our proposal to retain the Market-wide Derogation until March 2026, and our reasons therein supporting this proposal?

Yes, we agree with Ofgem's proposal to retain the Market-wide Derogation until March 2026 and with the rationale provided.

Question 8: Would you recommend any changes to the operation of the Market-wide Derogation (assuming that it was being retained for the longer term)?

Ofgem's SLCs serve as the primary regulatory tool for governing the retail market, setting out legal requirements that dictate how suppliers must operate and engage with customers. We suggest Ofgem drafts a new licence condition that appropriately ringfences retention-only tariffs offered to existing customers only, rather than maintaining the current market wide derogation for tariffs targeted at existing customers only.

We think the current draft licence conditions could be adjusted relatively easily to ensure suppliers would not be precluded from offering tariffs only to groups of existing customers. We would propose Ofgem makes the following amendments to SLC 22B.1 and 22B.2:

22B.1 Subject to paragraph 22B.2, the licensee must ensure that all its Tariffs are available to, and are capable of being entered into by, ~~both new and existing~~ Domestic Customers.

22B.2 Paragraph 22B.1 does not apply to:

- a. A Closed Fixed Term Tariff;
- b. A Collective Switching Tariff;
- c. A Dead Tariff which complies with standard condition 22D; and
- d. Tariffs only offered to a particular group of Domestic Customers defined on the basis of criteria specified by the licensee, provided that the criteria do not in any way ~~exclude all existing Domestic Customers relate to whether or not the Domestic Customer is a new or existing Domestic Customer.~~

Section 4. Potential long-term changes to the BAT

Question 9: 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 would like to reemphasise our response to Question 8, where we urge Ofgem to develop a new licence condition instead of relying on the reused, outdated drafting from the 2014 Retail Market Review, which has exceeded the consulted policy intent. This should be implemented prior to and in consideration of an enduring BAT.

In terms of other significant amendments, we believe that extending the current BAT will provide better visibility on how to adjust an enduring BAT in a stable market. This approach will ensure that future decisions regarding the BAT's long-term role are informed by robust market data and a comprehensive understanding of its effects.

ScottishPower
November 2024