Department for
Business, Energy
& Industrial Strategy

Domestic energy retail consultation

Opt-in switching and testing opt-out switching

Closing date: 15/10/2021

July 2021

Any enquiries regarding this publication should be sent to us at: energyloyaltypenalty@beis.gov.uk

Executive Summary

The Energy White Paper published on 14 December 2020[1] addressed the transformation of the energy system in the context of net-zero as we transition away from fossil fuels to a clean energy system. It sets out the importance of fairness in this transition, and our resulting plans to address the factors that have caused excessive charging in the domestic energy retail market on an enduring basis. Specifically, we said that we will:

- create the framework to enable us to introduce opt-in switching, consulting by March 2021 on how it should be introduced, tested and incrementally scaled up;
- consider how the current auto-renewal and roll-over (default) tariff arrangements could be reformed to facilitate greater competition, consulting by March 2021 on how opt-out switching could be tested as part of any future reforms; and
- consult on how to remove the supplier obligation thresholds for the Energy Company Obligation (ECO) and Warm Home Discount (WHD) scheme.

This consultation focuses on how we propose to take forward the first two of these three commitments. The ECO and WHD thresholds are discussed in this consultation, but the Government will publish separate consultations on our proposals in these areas[2].

Since the privatisation of the energy retail market, we have seen gradual improvements in competition, especially through the last decade with many new entrants and steadily increasing levels of switching. With these changes we transitioned from a market with low levels of consumer engagement and limited competitive pressure on energy suppliers, to a more innovative and more efficient market. However, this market effectively functions on two tiers.

There is a competitive tier, where energy suppliers are competing to attract engaged consumers to their business. In general, competition first focuses mainly on price, with other features such as the 'green-ness' of the tariff and customer service also key points of differentiation. However, this tier is the minority of the market, with less than half of consumers regularly shopping for a better deal and switching tariff. In this two-tier market, many of those consumers who do not regularly switch were charged significantly more than the efficient cost to a supplier of serving them, allowing the supplier to either earn excess profit on their tariff, or to continue to operate inefficiently.

This lack of competition, leading to excessive charges for disengage consumers, is often referred to as the 'loyalty penalty'. In 2016, the Competition and Markets Authority (CMA) calculated that this loyalty penalty was a significant cost for energy customers of the largest

[1] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
[2] The Government recently published the WHD consultation: https://www.gov.uk/government/consultations/warm-home-discount-better-targeted-support-from-2022

suppliers and estimates by Ofgem have found a similar scale of detriment of around £1.5bn per year.[3,4]

In 2019, the Government introduced the Default Tariff (Price) Cap to limit the extent of this loyalty penalty as a temporary measure, whilst longer-term measures are introduced and developed to facilitate effective competition.

The Government and Ofgem are in the process of introducing market reforms that will help facilitate effective competition and help address the underlying factors that have caused a loyalty penalty for energy consumers. This includes the introduction of Ofgem's Faster and More Reliable Switching Programme, smart data initiatives such as Midata and the smart meter rollout.

Building on these reforms, we also set up the joint Future Energy Retail Market Review in March 2019[5] to consider (among other retail policy areas) what further enduring measures may be needed and we consulted in July 2019[6]. We have taken on board the views of stakeholders[7] in developing our plans, which we set out in this consultation and announced in the Energy White Paper.

We have identified the causes of the loyalty penalty (detailed in section 1.2) and developed a set of measures to address these causes. We will create the framework to enable us to incrementally introduce opt-in switching to remove barriers to market information and engagement. And, we will test an opt-out switching scheme, where consumers on default tariffs[8] are switched onto a more competitive tariff with the choice to opt-out, as we consider how default arrangements might be reformed to enable greater competition. Section 1.4 of this document provides detail of how we reached these plans.

Following our introduction (section 1), sections 2 and 3 set out how we propose to introduce opt-in switching and test opt-out switching. We are seeking stakeholders' feedback and views on how we approach these measures, which will contribute to our legislative planning. Figure 1 and 2 in sections 2.2 and 3.2, provide high-level graphic examples of how these measures may operate.

In section 4 we seek stakeholders views on equality impacts and considerations. Section 5 then asks for stakeholder's views on how we might be able to support indebted consumers and

[3] Ofgem (2018) Final Impact Assessment: Default Tariff Cap
[4] CMA (2016) Energy Market Investigation, Final Report,
[5] https://www.gov.uk/government/publications/future-energy-retail-market-review
[6] https://www.gov.uk/government/consultations/flexible-and-responsive-energy-retail-markets
[7] The Government's response to the consultation can be found on the consultation page (https://www.gov.uk/government/consultations/flexible-and-responsive-energy-retail-markets) and Ofgem have published the individual stakeholder responses: https://www.ofgem.gov.uk/publications-and-updates/flexible-and-responsive-energy-retail-markets
[8] In section 2.3.1, we set out for the purposes of this consultation what mean when we are referring to "default tariffs". This is, tariffs that the consumer has not expressly agreed to be placed on (because, for example, they have not selected a new tariff at the end of a fixed term agreement or have moved into a new property); and expressly agreed to be placed on that are capable of continuing indefinitely (or can otherwise be automatically renewed or rolled over) without the need to secure the customers express agreement again.

enable them to switch supplier more easily, to remove this barrier to them being locked in with their existing supplier.

Following this consultation and subject to Parliamentary time and approval, we plan to introduce primary legislation to set the high-level framework to enable us to test opt-out switching and incrementally introduce an opt-in switching scheme. The more detailed design and implementation will then follow, with further consultation, likely through secondary legislation and/or supply licence condition (SLC) changes. The primary purpose of this consultation is therefore to inform policy decisions relating to the framework. However, it is also necessary to consider some design questions at this stage to make sure that the framework is appropriate.

As set out in section 1.5, these measures will take time to implement and we anticipate opt-in switching and opt-out testing are unlikely to commence before 2024. Section 2.3.5 explains that we propose for opt-in switching to be introduced incrementally, scaling up carefully as we develop our understanding of consumer outcomes and market impacts. We propose that the framework will allow the opt-in scheme to act as a tool, to be used as appropriate over time with batch size and frequency decisions being made and adjusted on an ongoing basis to reflect market and consumer circumstances.

With this consultation, we are also publishing our Energy Retail Strategy[9], which describes how, by setting a framework that incentivises energy companies to innovate for and engage with their customers, we will work with the market to take consumers on the journey to a net-zero energy system. In our strategy, one of our two objectives is that no matter how they engage in the market, all consumers should pay fair prices for their energy. The temporary price cap and the measures we consult on here, are key for achieving this objective.

Under existing legislation, the price cap can be extended for one year at a time, dependent on whether conditions for effective competition are in place, up to the end of 2023 at the latest. There have been some improvements towards more effective competition across the market since the price cap's introduction, but, progress has been slower than anticipated and some elements have been disrupted by the impacts of Covid 19[10]. And, as set out above, there is still more to do to tackle the factors that have caused a loyalty penalty, and our coming measures will not be complete or their impact maximised until after 2023.

If the price cap expires before the conditions for effective competition are in place, there is a substantial risk that the millions of consumers who remain on default tariffs will be exposed to the excessive charging that existed before the price cap's introduction[11]. This would not be an acceptable outcome. Accordingly, alongside the strategy paper and this consultation, we are announcing that we intend to legislate, subject to Parliamentary time, to enable the price cap to be continued through periodic extensions, if needed, beyond the existing longstop date of

[9] https://www.gov.uk/government/publications/energy-retail-market-strategy-for-the-2020s
[10] For instance, with smart meter roll-out the Government has confirmed that a new target-based policy framework to deliver market-wide rollout will apply from July 2021: https://www.gov.uk/government/consultations/smart-meter-policy-framework-post-2020.
[11] At the price cap's introduction, Ofgem assessed that such consumers were typically paying £75-100 more than they would in a hypothetical competitive market: Ofgem (2018) Final Impact Assessment: Default Tariff Cap

December 2023[12]. We are also publishing an analytical paper presenting some of the underlying evidence base on issues relating to the loyalty penalty and the economic rationale for the overarching policy position in the strategy[13].

This consultation goes into a lot of detail on our proposals and presented options, and we hope that stakeholders will be able to share their views on these to facilitate effective policy development. However, we are aware that not all stakeholders may wish to engage with the finer detail and have therefore included some of this in annexes, which we refer to where appropriate.

As discussed, these proposals have been developed by BEIS from the initial work conducted during the joint Government and Ofgem Future Energy Retail Market Review. The Government has decided to proceed with these measures, drafted this consultation and we will be seeking Parliamentary approval to create the framework to introduce these measures. However, we have worked closely with Ofgem and will continue to do so, and respondents should note that we may share their responses with Ofgem.

Given the early stage of policy development, we have not developed an Impact Assessment at this stage. Alongside this consultation, the Energy Retail Market Strategy and Price Cap announcement, we are publishing an analytical annex. It summarises the evidence base that underpins the rationale for change; the main objectives behind the policy strategy; the combinations of options being considered; and provides a high-level discussion of the expected impacts of the options.

We will develop Impact Assessments where appropriate during the policy development process, building on evidence gathered through this consultation and elsewhere as appropriate.

[12] An open letter to interested parties has been published with more detail at: https://www.gov.uk/government/publications/energy-retail-market-strategy-for-the-2020s
[13] https://www.gov.uk/government/consultations/energy-retail-opt-in-and-testing-opt-out-switching

Contents

General information

Why we are consulting

This consultation seeks stakeholders' views on how the Government should incrementally introduce an opt-in switching scheme and test opt-out switching. We set out detailed proposals and options, and we hope that stakeholders will be able to share their views on these to facilitate effective policy development.

Following this consultation and subject to Parliamentary time and approval, we plan to introduce primary legislation to set the high-level framework for these measures. The more detailed design and implementation will then follow, with further consultation, likely through secondary legislation and/or supply licence condition (SLC) changes. This consultation therefore primarily focuses on framework considerations. However, it is also necessary to consider some design questions at this stage to make sure that the framework is appropriate.

Consultation details

Issued: 23 July 2021

Respond by: 15 October 2021

Enquiries to: energyloyaltypenalty@beis.gov.uk

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Consultation reference: Domestic energy retail consultation: Opt-in and testing opt-out switching

Audiences:

This consultation will be of interest to individual energy companies, industry representatives, innovators, third party intermediaries in energy and/or other sectors and consumer and environmental groups.

The consultation is not limited to these stakeholders; any organisation or individual is welcome to respond.

Territorial extent: Great Britain (England, Scotland and Wales)

How to respond

Please respond to this consultation via the below Citizen Space link. We will also accept responses sent to the below email address, though please respond to the individual questions in a clear manner.

Respond online at: https://beisgovuk.citizenspace.com/energy-strategy-networks-markets/energy-retail-opt-in-and-testing-opt-out/

or

Email to: energyloyaltypenalty@beis.gov.uk

Write to:

Energy Markets and Affordability Team

Department for Business, Energy and Industrial Strategy

3rd Floor, Area Abbey 1

1 Victoria Street

London

SW1H 0ET

Tel: 020 7215 5000

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

This is a Government consultation, but we will continue to engage closely with Ofgem as we develop these measures and we may share responses with them.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

1. Introduction

1.1. The loyalty penalty

In 2016, the CMA identified the presence of a 'loyalty penalty' for some energy consumers[14]. This term describes a situation where energy suppliers have been able to take advantage of consumers who do not engage effectively with the market by charging them excessively for their energy, allowing the supplier to either earn excess profit on their tariff, or to continue to operate inefficiently.

The price cap was introduced at the start of 2019 to prevent excessive charges as a temporary measure whilst effective competition can be established in the market to address factors that have caused a loyalty penalty. While there have been some improvements across the market since the CMA's 2016 report, with increased retail market engagement, rising switching levels and progress with the smart meter rollout, there is still more to do to ensure consumers will not face unfair prices in the price cap's absence. The domestic retail energy market still operates as a 'two-tiered' market and the default tariff segment of the retail market is insufficiently competitive. Ofgem's analysis of historical patterns suggest that the cap leads to default tariffs being £75-100 a year lower for typical consumers than they would otherwise be.

The segment of consumers who are at most risk of the loyalty penalty are those on default[15] tariffs, given, at a high level, the lack of market engagement in the rolling-over contract process.

While consumer market engagement through switching increased in 2019, this was largely driven by consumers who had switched previously. The most recent Ofgem data from 2020 shows that 60% of customers are on default tariffs.[16]

The work of the CMA and Ofgem makes it clear that a loyalty penalty in energy is likely to have negative distributional consequences. Customers with vulnerable characteristics are the least likely to engage in the retail energy market and are most likely to be exposed to the loyalty penalty[17].

[14] https://www.gov.uk/cma-cases/energy-market-investigation

[15] In section 2.3.1, we set out for the purposes of this consultation what we mean when we are referring to "default tariffs". This is, tariffs that the consumer has: not expressly agreed to be placed on (because, for example, they have not selected a new tariff at the end of a fixed term agreement or have moved into a new property); and expressly agreed to be placed on that are capable of continuing indefinitely (or can otherwise be automatically renewed or rolled over) without the need to secure the customers express agreement again.

[16] Ofgem, All supplier RFI data.

[17] According to the 2019 Ofgem Consumer Survey (https://www.ofgem.gov.uk/publications-and-updates/consumer-survey-2019), the proportion of households that report never having switched energy supplier is higher in the lowest 'social grade'[17] (41%), whereas only 20% of consumers in the highest social grade reported that they have never switched.
In 2016, the CMA (See Annex, Figure 1. Source: CMA, Energy Market Investigation: Final Report: Figure 9.1) found that such customers with vulnerable characteristics were more likely to have never considered switching or shopping around within the previous three years. These were households who may have incomes below £18,000 a year; live in private rental or social housing; have no qualifications; are disabled; or are on the Priority Services Register (PSR). In this sample, around 15-20% of those with vulnerable characteristics switched, compared with around 30-35% of those who were 35-44, held a degree, earned over £36,000 or had a mortgage

Given the circumstances of these customers, they are also more likely to be at risk of harm from paying more for their energy, with energy costs often making up a higher proportion of their income, and from under-consumption of energy[18]. Consumers in vulnerable circumstances are also more likely to be experience adverse outcomes from under-consumption, for example for reasons relating to pre-existing health conditions.

1.2 The causes of loyalty penalties

The CMA's 2016 Energy Market Investigation suggested a variety of factors that contributed to the loyalty penalty in the domestic energy retail market, including market failures and several regulatory aspects and technical constraints, and subsequent Ofgem analysis suggests these failures were costing default tariff customers around £1.5bn a year.[19]

The factors most relevant to the domestic retail energy market (from the CMA's ongoing review of the energy and other markets[20]) are:

- **1. Automatically renewed and deemed contracts.** Due to the importance of the continuity of supply, the energy market regulatory framework allows 'default arrangements' to be applied. As highlighted by the CMA, the presence of automatically renewed and deemed contracts directly contribute to loyalty penalties in a variety of consumer markets, because they enable consumers to remain 'passively loyal' with their existing supplier. This creates a market segment particularly at risk of weak competition, because of the almost definitional reduced extent of market engagement by consumers on default tariffs, and the ease with which they can be identified by suppliers.
- **2. Barriers to market information and engagement.** Consumers rely on access to high-quality information and advice on (among other things) price and customer service to make informed choices. This is particularly important in a competitive market, with a wide variety of suppliers and variation in the types of tariffs available depending on consumer usage patterns and preferences. Several information barriers restrict customers from understanding the market:
    - **Perceptions that shopping around can be very time and cognitively consuming.** Engaging with the market requires consumers to access information on offers available, assess them and act on this information in line with their preferences. Some may have misconceptions, for example, thinking it is more time consuming or difficult to search than it really is.
    - **Misconceptions of supply risk.** The CMA's qualitative research[21] provided evidence that consumers may be concerned that switching could temporarily stop their energy supply.

[18] Rationalising of energy use that could, for instance, lead to adverse health outcomes.
[19] Ofgem (2018) Final Impact Assessment: Default Tariff Cap
[20] CMA, Tackling the loyalty penalty: Response to a super-complaint made by Citizens Advice on 28 September 2018: https://assets.publishing.service.gov.uk/media/5c194665e5274a4685bfbafa/response_to_super_complaint_pdf.pdf
[21] CMA, Tackling the loyalty penalty: Response to a super-complaint made by Citizens Advice on 28 September 2018. Page 24.

- **For those only engaging without using the internet, independent sources of information are limited and not well known.** Ofgem survey results in 2019 found that 30% of customers with no internet use were not confident in choosing the best energy deal for their household, as opposed to 15% of those who regularly use the internet [22][23]. Those on low incomes or from a lower social grade were also significantly less likely to use price-comparison websites (PCWs) when switching [24].
- **Many customers do not have confidence in the results generated by PCWs.** The Ofgem Consumer Survey results from 2019 found that 30% of customers did not believe PCWs to be unbiased in the way they present energy deals[25]. The CMA Energy Market Investigation found that 43% of those who were not confident in getting the right deal through a PCW said they did not believe the results of the search, and 26% said they found the information was too complex and were unsure of what the right deal was[26].

- **3. Energy suppliers can easily segment customers into groups with different abilities to access information and engage with the market effectively.** By tailoring tariff offerings and marketing strategies to different consumers, for example those who are more price sensitive, some consumers are isolated from the benefits of competition.

1.3 How we have been tackling the loyalty penalty

Before the price cap's introduction, the Government and Ofgem relied on a strategy of encouraging consumers to switch. Measures were identified and their implementation began, to help remove the barriers to market information and engagement and help create the enduring conditions that embed competition in the market. These measures include:

- The introduction of Ofgem's Faster and More Reliable Switching Programme.
- Ofgem's planned implementation of Midata[27]
- The smart meter rollout.
- Considering how the regulatory framework can be reformed to enable more innovative business models, products and services, whilst providing more consistent consumer protections[28].

[22] We use outputs from Ofgem's 2019 Consumer Survey to allow comparability with previous years, given changes to survey methodology in 2020, and the potential for one-off factors resulting from the effects of COVID 19.
[23] Ofgem, Consumer Survey 2019, Consumer Engagement Survey 2019 Data Tables,Table 341
[24] Ofgem, Consumer Survey 2019, Consumer Engagement Survey 2019 Data Tables, Table 227.
[25] Ofgem, Consumer Survey 2019, Consumers Engagement Survey 2019 Data Tables, Table 306
[26] CMA, Energy Market Investigation, Final Report: Appendix 9.1: CMA domestic customer survey, Page A9.1-11
[27] Ofgem's work on Midata has been paused: https://www.ofgem.gov.uk/publications-and-updates/update-midata-energy-programme Latest update available here: https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/midata-energy-project
[28] This is aim set out in the joint Future Retail Market Review 2019 consultation (https://www.gov.uk/government/consultations/flexible-and-responsive-energy-retail-markets) and in the Government's 2020 Energy White Paper: https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

However, these take time to implement, whilst disengaged consumers continued to experience excessive charges. Therefore, in 2019, the Default Tariff (price) Cap was introduced as a temporary measure to limit the rates that suppliers can charge the 11 million[29] households on default tariffs, restricting a significant loyalty penalty. Ofgem's analysis of historical patterns suggest that the cap leads to default tariffs being £75-100 a year lower for typical consumers than they would otherwise be.[30]

Since the price cap was introduced, there are some signs that consumer engagement with the retail market may have increased. However, increases in switching have largely been driven not by new customers engaging with the market for the first time, but by consumers who have previously switched becoming more likely to switch repeatedly.[31] The most recent Ofgem data from 2020 shows that 60% of customers are on default tariffs.[32]

We believe that deeply and widely embedded competition is the most effective and sustainable way to keep prices low for all consumers. Where the market and policy conditions for effective competition are not yet in place, we remain prepared to ensure that proportionate price protection remains. There are challenges with using the price cap or price intervention to tackle excessive charging:

- The price cap does not address the causes of loyalty penalty pricing, which result in higher prices and limited competition in the default tariff market, since it does not remove barriers to switching, stop fixed term customers being automatically rolled onto more expensive default tariffs or help persuade people on poor value default tariffs to engage with the market.[33]
- In the long-term, the cap may weaken competition, which, under the current market design, relies on direct and continued engagement by individuals with the market, since consumers may be less likely to engage when there are lower savings to be made by doing so and where there is a strong perception of protection.[34]
- Price intervention's effectiveness relies, in the case of the price cap under the Domestic Gas and Electricity (Tariff Cap) Act 2018, on the regulator's ability to estimate 'efficient' costs. In retail markets, given the role of customer-facing elements, technology, and how costs change over time, this is a challenge. For instance, there is a risk of setting the cap too high (consumer detriment remains) or too low (suppliers struggle to finance their activities). We believe that finding a way to use competition to identify efficient costs would be more sustainable.
- Widely recognised and embedded economic principles mean that regulators conventionally resort to direct price regulation where there are features of a natural

[29] now 15 since, in 2021, pre-payment meter consumers are also covered
[30] Ofgem, Default Tariff Cap Final Impact Assessment (2018)
[31] Reference to 2019 Ofgem Consumer Survey
[32] Ofgem, All supplier RFI data.
[33] The number of customers on Big Six default tariffs has not changed significantly since the cap was introduced in January 2019.
[34] While the differential and switching have held up since the cap was introduced (partly because of recent falls in wholesale costs which more rapidly feed into fixed tariff prices), numerous empirical studies suggest this should be expected in the longer term.

monopoly, which make it impossible or extremely challenging to rely on directly competitive market structures.

Our long-term strategy is therefore to facilitate competition, targeting the causes of loyalty penalties whilst we protect consumers from the consequences in the interim. As mentioned in the opening paragraph to this section, the Government and Ofgem are already bringing in policies to reduce the market engagement barriers to consumers and help create the enduring conditions that embed competition in the market. However, we think that further action is required to address the causes identified by the CMA.

1.4 How we will address the factors that have caused a loyalty penalty

As part of the joint Future Retail Market Review[35], the Government and Ofgem have considered (among other retail policy areas) what further enduring measures may be needed to facilitate competition and tackle the factors that have caused a loyalty penalty. In 2019 we consulted, asking for stakeholders' views, on how we should prevent excessive charges for loyal consumers[36].

Our vision is that all consumers receive competitively-priced energy and that consumers in vulnerable situations, who can face particular barriers to engaging with the market, have protections appropriate to their needs.

We have concluded that deeply and widely embedded competition is the most effective and sustainable way to keep prices low for all consumers in the long term. We therefore announced three policies in the Energy White Paper[37] to help achieve this, in addition to the measures the Government and Ofgem are already introducing set out in section 1.3. These are:

- To help level the playing field between suppliers by consulting on how to remove the obligation thresholds for the Energy Company Obligation (ECO), and Warm Home Discount (WHD).
- Then, to create the framework to enable us to incrementally introduce an opt-in switching scheme.
- To test opt-out switching as part of considering how default arrangements might be reformed to enable greater competition.

These measures will help enable the most competitive suppliers, who offer fair prices and good customer service, to thrive, supporting a healthy market and providing the best outcome for consumers. This consultation focuses on how we will introduce the latter two of these. The following sections set out our strategy of using these policies, in addition to those highlighted in

[35] https://www.gov.uk/government/publications/future-energy-retail-market-review
[36] https://www.gov.uk/government/consultations/flexible-and-responsive-energy-retail-markets
[37] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future

section 1.3, to address the factors that have caused a loyalty penalty. Annex A provides a summary of our views on the other policies that we set out as options in our 2019 consultation.

1.4.1 Removing obligation thresholds

In our 2019 consultation we highlighted concerns about the current size-based obligation thresholds. We highlighted that they may lead to an uneven playing field for suppliers, disrupt important price signals and incentivise some suppliers to set their prices in a way that means they recover these policy costs disproportionately from default tariff customers, exacerbating the loyalty penalty.

Our consultation asked two questions on removing these obligation thresholds. The majority of consultation respondents who answered these questions agreed that removing the thresholds for the ECO and WHD would help remove imbalances in the retail market, and help reduce incentives for suppliers to adopt pricing strategies that lead to excessive charges for loyal consumers[38].

Some respondents also argued that the threshold removal would reduce the pressure on larger suppliers to price acquisition (usually fixed term) tariffs below cost to be competitive with unobligated suppliers, and so reduce their need to set excessively higher charges for their default tariffs to recoup these losses.

A small number disagreed, arguing that small suppliers face substantially higher upfront costs for participating in the schemes, and exemptions are necessary to avoid them. We agree that removing the ECO and WHD thresholds with the current design of these schemes would put too great a burden on small energy suppliers. We are therefore consulting on how to reform these thresholds as part of broader scheme reforms, aimed at reducing the admin costs of participation in the scheme[39].

1.4.2 Introducing an opt-in switching scheme

Following the CMA's Energy Market Investigation[40], Ofgem introduced a new licence condition requiring suppliers to participate in trials, established an in house behavioural insights unit and embarked on a programme of work to develop and test new prompts to increase consumer engagement with the retail market. Ofgem reported that these trials included over 1.1 million energy customers, and resulted in over 94,000 of them switching to new energy tariffs, with most of them making an active choice about their energy tariff for the first time in years. In total, these customers have saved around £21.3 million between them[41].

[38] A summary of consultation responses can be found here:https://www.gov.uk/government/consultations/flexible-and-responsive-energy-retail-markets
Individual responses were published here:https://www.ofgem.gov.uk/publications-and-updates/flexible-and-responsive-energy-retail-markets
[39] The Government recently published their ECO and WHD consultations:
https://www.gov.uk/government/consultations/design-of-the-energy-company-obligation-eco4-2022-2026
https://www.gov.uk/government/consultations/warm-home-discount-better-targeted-support-from-2022
[40] https://www.gov.uk/cma-cases/energy-market-investigation
[41] A summary of these findings and links to the individuals trials is available here: https://www.ofgem.gov.uk/publications-and-updates/what-works-increasing-engagement-energy-tariff-choices

Ofgem found that customers who haven't switched energy tariff for many years can be prompted to do so following simple, well designed letters and emails. The most successful trials were the final set, the Collective Switching trials[42], which were designed using the learnings from the Ofgem's previous trials. These removed as many steps from the switching process and provided additional reassurances, such as independent support. They successfully removed barriers to switching for consumers who have been on default tariffs for a long time, with between 19-30% of consumers switching their tariff, 5 to 10 times higher than the control group, which had rates of 2.6-4.5%.

The Government engaged closely with Ofgem as these trials evolved. We think the evidence shows that an opt-in switching scheme on a wider scale would help remove barriers to market information and engagement for consumers, which is one of the three identified factors causing the loyalty penalty (section 1.2). This will make it easier for consumers to engage with the market and switch onto tariffs that can offer savings and/or that better suit their needs.

The opt-in scheme should increase competitive pressures in the market and reduce the ability for suppliers to charge excessive charges to so many consumers. Through encouraging consumer engagement with the market and energy, which will likely be necessary for uptake of decarbonising services and products, opt-in switching could also assist reaching the UK's 2050 net-zero target. However, we also intend for the scheme's design to help facilitate reaching the UK's 2050 net-zero target.

As this consultation sets out, there are various approaches to introducing an opt-in switching scheme. We propose for the framework to allow some flexibility so that the scheme can evolve and test and learn. We plan for the scheme to be introduced incrementally, scaling up carefully as we develop our understanding of consumer outcomes and market impacts.

Introducing opt-in switching was highlighted as a potential policy option in the 2019 consultation. The option received primarily favourable views from respondents with six in favour versus two against. Most respondents suggested further engagement and trials to further develop this measure. As set out in section 2.1, we intend for the scheme to be introduced incrementally, increasing volumes as we test and learn.

If required and subject to Parliamentary consent, we will take powers to introduce this policy. Section 2 of this consultation sets out our proposals of how we propose to create the framework to enable us to introduce this policy with questions to stakeholders on various areas under consideration.

1.4.3 Testing opt-out switching as part of considering how default arrangements might be reformed to enable greater competition.

We expect the opt-in switching scheme and other coming reforms highlighted in section 1.3 will lead to many more consumers engaging with the market. We also anticipate that GB's energy

[42] https://www.ofgem.gov.uk/publications-and-updates/ofgems-collective-switch-trials The (DECC run) Government's 2013 Cheaper Energy Together fund also showed the success of Collective Switching schemes: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253862/Helping_Customers_Switch_Collective_Switching_and_Beyond_final__2_.pdf

transition over this decade and beyond, with greater uptake of electric vehicles and smart systems and appliances, will increase the average consumer's engagement with their energy use and, in turn, with the energy retail market. We are already seeing that those with smart meters are engaging more with their energy use and the Government has confirmed that a new target-based policy framework to deliver market-wide rollout will apply from July 2021 there are many more installations to come[43].

However, it is likely, as the Collective Switch trials showed, that a sizeable number of consumers will remain passive on a default tariff with a loyalty penalty whilst the current default arrangements include auto renewal or continuation with the same supplier. As the CMA highlighted, the loyalty penalty is caused by factors beyond the barriers to market information and engagement for consumers. We have therefore been considering what changes to default arrangements may support addressing the factors that have caused a loyalty penalty.

The default arrangements determine what happens when a consumer does not make an expressed tariff choice. Removing default arrangements and requiring consumers to expressly choose a tariff before they can be supplied energy, might be one solution to the loyalty penalty[44]. However, given the essential nature of energy as a service and the risks to consumers from losing supply, we do not consider this to be a good approach.

There are also options where the default could be changed to a Government and/or Ofgem selected tariff and/or supplier, whose price is limited. However, that would likely result in a large portion of consumers being on that tariff/supplier and would require significant state oversight.

As stated already in this introduction, we think that deeply and widely embedded competition, rather than price intervention, is the most effective and sustainable way to keep prices low for all consumers in the long term. We therefore think that any reforms to the default arrangements should focus on bringing greater competition, while meeting the need for continuous supply and service for consumers.

Consumer choice is a key characteristic of an effective market, and consumers should always have a choice about which supplier they are with and which tariff they are on. However, this does not mean that energy suppliers should expect to be able to simply rollover or continue contracts with customers indefinitely, as that is not a feature associated with fully competitive markets.

We think that any reforms to default arrangements to facilitate competition between suppliers for consumers who are not disengaged within the market (not making express choices), would likely require switches to be possible without express consumer consent, with an opt-out choice instead. Therefore, our first step is to test if moving consumers, with an opt-out, to a cheaper contract with an alternative supplier could work well for consumers.

[43] https://www.gov.uk/government/consultations/smart-meter-policy-framework-post-2020
[44] This could create a domestic energy retail market like many other retail markets, such as groceries, where generally consumers are required to actively purchase goods each time before consuming.

It is important to acknowledge that some consumers who are on default tariffs could be described as 'engaged' with the market and 'actively loyal' rather than 'disengaged' and 'passively loyal'. Some of the consumers who were prompted with a cheaper market offering by the Ofgem trials, will have actively chosen to stay on their existing tariff for various reasons despite the higher price. We do not think that it is desirable (or practicable) for any policy to remove the choice from the actively loyal consumer to stay with their existing supplier.

The concept of engagement is also evolving and complicated with rising numbers of consumers regularly switching with auto switching tools that require little active market engagement once they have signed up[45]. These are examples of where consumers are already happy to trust a third party to minimise their bills by taking on the market engagement. As the energy market becomes further digitised, we may see further innovation in this space, which we will continue to monitor and take into consideration.

Introducing opt-out switching was noted as a potential policy option in our 2019 consultation. There were a few comments against this option, mainly with concerns about the implications for consumer choice and market stability. We appreciate and share these concerns, which is why, as set-out in section 3.1, our aims are to sensitively understand the consumer experience. We'd like testing to limit consumer risk by using small samples in a controlled and monitored environment, before potentially building to wider consumer segments as we learn and are confident that appropriate safeguards are in place.

We intend to take powers, subject to Parliamentary consent, to test how opt-out switching could work best for consumers[46]. Section 3 of this consultation sets out how we propose to do this with questions to stakeholders on various areas under consideration. In Annex B, we provide thoughts on how any future default arrangement reforms might look.

1.4.4 Protecting those in vulnerable circumstances

Whilst the price cap remains in place, which targets all default tariff consumers, we do not think that any bespoke protection against loyalty penalty pricing for consumers in vulnerable circumstances is required. The WHD scheme is also in place and provides financial assistance to reduce the energy bills of many consumers in this category; we are extending the scheme to 2025/26 and expanding its total spending envelope to £475m per year (in 2020 prices).

The price cap is only due to continue whilst conditions for effective competition for domestic supply contracts are not in place, or until the longstop date set in legislation[47]. Even when conditions for effective competition are present, there may be groups who face additional barriers to the retail market who may need proportionate protection.

[45] The auto switching service Look After My Bills has now reached over 500,000 active customers: https://lookaftermybills.com/blog/500000members/

[46] We do not propose for primary powers to allow for anything beyond testing. Any future reforms involving opt-out switching, would likely require further primary powers.

[47] This is currently until the end of 2023. However, we have announced that we intend to legislate (subject to Parliamentary time and approval) to enable the price cap to be continued, if necessary, beyond 2023. An open letter to interested parties has been published with more detail at: https://www.gov.uk/government/publications/energy-retail-market-strategy-for-the-2020s

Section 9 of the Domestic Gas and Electricity (Tariff Cap) Act 2018 requires Ofgem (before and after the cap expires) to review (among other things) whether there are categories of consumers who should be provided protection from loyalty penalty pricing. And if Ofgem concludes protection is appropriate, then it must take such steps as it considers appropriate to address the issue under the Gas Act 1986 and the Electricity Act 1989. Therefore, the Government is confident that if it remains necessary to protect consumers in vulnerable circumstances from loyalty penalty pricing, Ofgem will take appropriate action. We will support Ofgem to do this as required.

1.5 Timings

To introduce opt-in switching and test opt-out switching as we propose in this consultation, primary legislation will be required. As stated in the Energy White Paper, we plan to introduce the opt-in switching scheme once we have reformed the exemption that smaller energy suppliers have from participating in ECO and WHD, which may also require primary legislation and time for smaller suppliers to prepare. Following primary legislation, some of these measures will require secondary legislation and/or supply licence condition (SLC) changes. Therefore, these policies are still subject to Parliamentary time and approval, and extensive planning and design development. They are therefore unlikely to be operational until 2024 at the earliest.

1. **Are there any other measures you think the Government should consider to help address the factors that have caused a loyalty penalty?**

2. The introduction of an opt-in switching scheme

2.1. Progressing from Ofgem's consumer retail market engagement trials

Since the CMA's 2016 Energy Market Investigation[48], Ofgem introduced a new licence condition requiring suppliers to participate in trials, established an in-house behavioural insights unit and embarked on a programme of work to develop and test new prompts to increase consumer retail market engagement. Ofgem reported that these trials included over 1.1 million energy customers, and resulted in over 94,000 of them switching to new energy tariffs, with most of them making an active choice about their energy tariff for the first time in years. In total, these customers have saved around £21.3 million between them[49].

Ofgem found that customers who haven't switched energy tariff for many years can be prompted to do so following simple, well designed letters and emails. The most successful trials were the final set, the Collective Switching trials[50], which were designed using the learnings from the Ofgem's previous trials to remove the hassle from the switching process. They successfully removed barriers to switching for consumers who have been on default tariffs for a long time, with between 19-30% of consumers switching their tariff, 5 to 10 times higher than the control group, which had rates of 2.6-4.5%. Ofgem's follow-up studies suggest that the Collective Switch trial interventions led to greater long-term market engagement for those who responded to the initial prompt[51].

The Government engaged closely with Ofgem as these trials evolved and, we intend to create the framework to enable incremental introduction of an opt-in switching more widely, working with Ofgem.

Such an opt-in switching scheme, will not necessarily replicate the framework and design of the trials. The Government has been considering how the scheme should look and, in this consultation, we set out our proposals and considerations, which we would like to hear stakeholders views before we start to implement the scheme.

[48] https://www.gov.uk/cma-cases/energy-market-investigation
[49] A summary of these findings and links to the individuals trials is available here: https://www.ofgem.gov.uk/publications-and-updates/what-works-increasing-engagement-energy-tariff-choices
[50] https://www.ofgem.gov.uk/publications-and-updates/ofgems-collective-switch-trials The (DECC run) Government's 2013 Cheaper Energy Together fund also showed the success of Collective Switching schemes: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253862/Helping_Customers_Switch_Collective_Switching_and_Beyond_final__2_.pdf
[51] 63% of those who switched during the trial, following a prompt, switched again in the 17 subsequent months. The subsequent switching rate for the control group (who received no prompt) was much lower, 31% of those who switched during the trial then subsequently switched and 33% who didn't initially switch then went on to do so during the 17 month period. Of those who received the initial prompt but didn't switch during the trial, only 33% switched in the 17 subsequent months. https://www.ofgem.gov.uk/publications-and-updates/prompting-sustained-engagement-energy-tariff-switching

The trials' aims were to understand how consumers would respond to prompts and test whether this type of intervention could have successful consumer outcomes. They mainly used samples of consumers with the simplest circumstances to simplify the delivery of the trial or because some customer types would not have been eligible to switch to the exclusive tariff.

The framework and design decisions for a full scheme will therefore need to give particular consideration to the gaps that the trials did not cover, such as smart meter and pre-payment meter customers, those with special communication needs and consumers who are eligible for the Warm Home Discount. We also think that the introduction of a full scheme should be taken incrementally, with volumes increasing over time as we test and learn. For that reason, we think that the framework that the Government plans to set for the scheme should allow flexibility in design.

2.2. Framework and roles

Our first step is to set the high-level framework of the opt-in switching scheme and introduce any legislation necessary to do this. The more detailed design and implementation will then follow, with further consultation. This consultation therefore primarily focuses on framework considerations. However, it is also necessary to consider some design questions at this stage to make sure that the framework is appropriate. We have engaged closely with Ofgem, who led on the recent retail market engagement trials, in developing the proposals , but have not yet decided who will have policy ownership of which parts of the scheme.

For the Collective Switch trials, a Price Comparison Website (PCW), Energyhelpline, was selected through a competitive process to deliver much of the operations, working closely with Ofgem. We intend for the full scheme to include a Delivery Body, who will likely play a similar role to the PCW's in the trials, this is discussed in detail in section 2.5. In the following sections the consultation considers various ways the framework could operate and asks for stakeholders' views. To assist stakeholders understand at a high level how the scheme may be delivered, Figure 1 below gives a graphic example.

The steps in Figure 1 are:

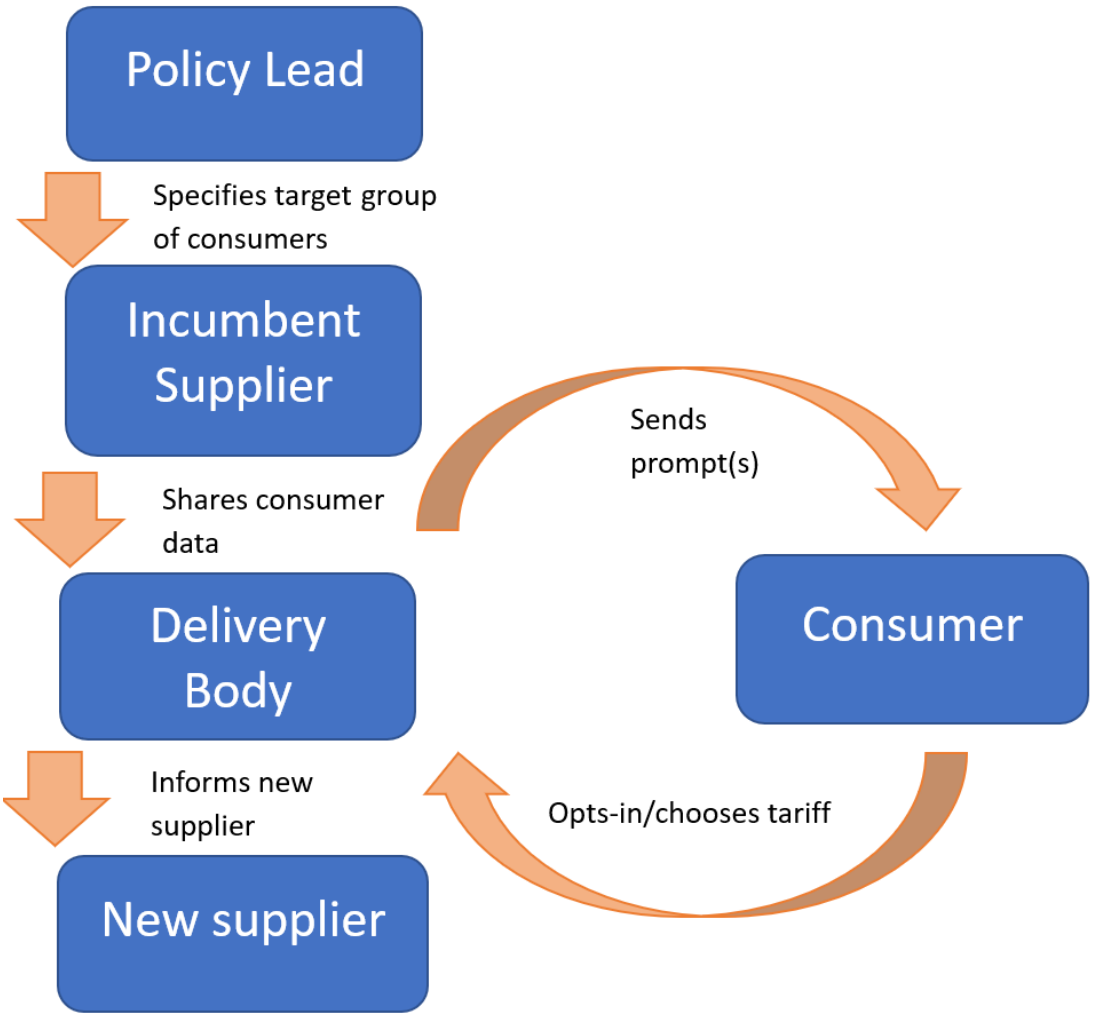
- Policy lead (Government and/or Ofgem) and/or Delivery Body determine the target consumers for the opt-in switch batch and suppliers are required to select consumers.
- After consumers are offered an opt-out from their data being shared[52], the incumbent supplier shares the consumer data with the Delivery Body necessary for the opt-in prompt.
- The Delivery Body sends the prompt (e.g. could be a winning tariff from a competitive process or an indication of saving available through a PCW platform, see section 2.4) to target consumers. An alternative communication design is contact by the incumbent

[52] As set out in Annex D, for the avoidance of doubt, we are not proposing to rely on a customer's failure to opt-out as evidence of consent to disclosure of their personal data. Rather, we anticipate suppliers will be legally obliged to share information for the purposes of the scheme, with the initial opt-out providing an opportunity to prevent this from occurring.

supplier as directed by the Delivery Body, options are discussed section 2.7. Consumers opt-in to the switch by contacting the Delivery Body.

- Delivery Body informs winning supplier who initiates the switch.

Figure 1: Example framework for delivery of the opt-in switching



2.3. Targeting

2.3.1. Tariff types

As discussed in section 1.4, the aim of introducing the opt-in switching scheme will be to address one of the leading factors that have caused loyalty penalty pricing, barriers to market information and engagement. We therefore think that the scheme should be targeted at those who are currently "disengaged" from the market.

Ofgem considered the question of who should constitute 'disengaged' for the purposes of setting up a database to facilitate customer engagement[53]. In that context, a disengaged consumer was someone who had been with a supplier on a default tariff(s) (non-fixed term tariffs or tariffs they had been automatically placed on) for three years or more[54]. We think that the approach adopted there may be an appropriate starting point for considering which tariffs should be targeted by the opt-in switching scheme and discuss this below.

Customers on default tariffs (as defined above) can passively consume in a disengaged manner and therefore face a loyalty penalty. It is important to acknowledge that some of these consumers are 'engaged' with the retail market and 'actively loyal' rather than 'disengaged' and 'passively loyal'. However, we do not think it is desirable (or practicable) to try to identify these customers and exclude them from the opt-in switching process. In practice, we anticipate engaged actively loyal customers will choose not to switch when approached.

Some suppliers offer 'evergreen supply contracts' (often referred to as Standard Variable Tariffs, SVTs[55]) as a leading acquisition tariff, which consumers have therefore expressly agreed to switch onto. Though these consumers have made an initial active choice to be on this tariff, the consumer will remain on that tariff until they actively choose to switch off. So, after they have made an active choice, they could become passive and not engage with the rest of the market, and not realise the price they are paying is on average more expensive. These consumers can therefore also be victims to loyalty penalty pricing.

We therefore feel that, as with the scope of the SLC definition for Default Tariffs, the opt-in switching scheme should have the ability to target evergreen supply contracts that were initially actively chosen. Though, as with the SLC's definition for a "Disengaged Customer", this may only be appropriate after a period on that tariff, as a 'consent check'; this is explored further in section 2.3.2.

We propose that the scope of tariff targeting should be guided by what enables passive loyalty and disengagement, which we conclude are tariffs that the consumer has:

[53] Ofgem looked into setting up a database of disengaged consumers following the CMA's recommendations in their 2016 Energy Market Investigation: https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/how-switch-energy-supplier-and-shop-better-deal/prompting-engagement-energy-tariff-choices

[54] See Condition 56 for full definition of a disengaged consumer and default tariff. https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions

[55] A tariff that is for a period of an indefinite length and which does not contain a fixed term period.

- not expressly agreed to be placed on (because, for example, they have not selected a new tariff at the end of a fixed term agreement or have moved into a new property); and
- expressly agreed to be placed on that are capable of continuing indefinitely (or can otherwise be automatically renewed or rolled over) without the need to secure the customers expressed agreement again.

The scheme would therefore be able to meet its aim of removing barriers to market information and engagement to those who are disengaged. For the purposes of this consultation, we refer to these tariffs as "default tariffs".

The tariff types that the scheme may target is likely to be set in primary legislation. The following sub-sections in the targeting section (2.3) consider how the scheme should approach and prioritise targeting of consumers on tariffs within this class. The power to address these issues (e.g. through more detailed secondary legislation) is likely to be provided for in the framework we are currently consulting on. However, final decisions about the specifics of how targeting will work and which consumers may be prioritised are unlikely to be taken until implementation stage after this framework is in place.

2. Do you agree with the proposed scope of tariff targeting?

2.3.2. Duration of retail market disengagement

As discussed above, not all consumers on a default tariff are passively loyal, some will be 'engaged' with the energy market and content to remain on their default tariff.

As part of the CMA's Energy market investigation, which concluded in 2016, they concluded that a consumer on a default tariff for a greater length of time was more likely to be disengaged. Stating[56]:

"…we consider that if customers are still on default tariffs with the same supplier after three years they are…unlikely to have actively chosen to be on such tariffs, especially where such tariffs are at a substantial premium to fixed-term tariffs. We therefore consider the remedy [measures for promoting engagement] should apply to all customers who have been on an SVT (or any other default tariff) with the same supplier for a total of three or more years."

The CMA highlighted that 80% of SVT customers had been on their tariff for more than a year, 55% more than three years and 40% more than five, which indicates that the longer a consumer has been on a SVT the less likely they are to switch, a proxy for market engagement. More recent Ofgem data supports these 2016 CMA findings[57].

This was also supported by Ofgem's Cheaper Market Offers Communication (CMOC) trials[58]. In the trials, default tariff consumers were sent a cheaper market offer communication from their own supplier, alerting customers to personalised cheaper market tariffs. Without the

[56] Final Report of Phase 2 (page 832): https://www.gov.uk/cma-cases/energy-market-investigation#cma-response-to-ofgem-consultation-on-remedies-implementation
[57] Ofgem 2019 Consumer Survey (Consumer Survey Data Tables, Table 155) showed that 91% of SVT customers had been on their tariff for more than a year, 78% for three or more years, 72% five or more years and 64% having never switched.
[58] https://www.ofgem.gov.uk/publications-and-updates/cheaper-market-offer-communication-trial

intervention, 5.9% of those who had only been on a default tariff for 3 to 6 months switched on their own, this was 3.6% for those on a default tariff for 6 months to 3 years, and only 2.2% for those on a default tariff for more than 3 years[59].

Ofgem's consumer engagement survey defines disengaged customers as those who have not taken the following actions: switched energy supplier or tariff, or compared tariffs offered by their energy supplier or with other energy suppliers within the past 12 months.[60]

A consumer who has only been on a default tariff for a short period (e.g. six months) will have engaged with the market to switch relatively recently and is therefore less likely, than someone who hasn't switched in a long time (e.g. more than three years), to require a prompt to overcome the engagement and information barriers to switching.

Given the opt-in scheme is likely to have the greatest impact on consumers who have been on default tariffs the longest, we think that an opt-in scheme could focus on, or prioritise, targeting consumers who have been on a default tariff for longer durations.

We do not think that an opt-in scheme should necessarily, like the trials, only target consumers who have been on default tariffs[61] for more than 3 years. We would like to hear stakeholders' views on this question. The scheme is likely to also face administrative barriers that will limit how many consumers it can reach in a given period. Therefore, to best achieve our aims, some sort of prioritisation is likely to be appropriate.

Looking back to the market information and engagement barriers in section 1.2, there are greater barriers for digital excluded consumers or those who don't trust PCW comparisons. 75% of switches made in the Collective Switch trials were made through the PCW's helpline. To have the greatest impact, the scheme could prioritise offline customers. There is also evidence of more limited competition in this segment[62], so running competitive processes for these consumers could stimulate cheaper offerings to this segment.

The case for including a duration element, as part of targeting, is strongest for consumers who have expressly agreed to be on evergreen (standard variable) tariffs. In this case, consumers who have been on these tariffs for short durations have recently actively engaged with the market and chosen that tariff. As discussed in section 2.3.1, the indefinite nature of these tariffs may result in the consumer becoming disengaged over time and subject to a loyalty penalty.

3. Which consumers do you think are more likely to be disengaged with the retail market, for instance due to their circumstances or duration on a default tariff?

[59] The trials also showed that the power of intervention's effect (in terms of the relative increase in switching rate) was positively related to the duration on a default tariff, with a 78%, 128% and 160% relative increase for these three groups respectively to switching rates of 10.5%, 8.2% and 5.7%.
[60] https://www.ofgem.gov.uk/system/files/docs/2018/10/consumer_engagement_survey_2018_report_0.pdf
[61] Some suppliers choose to roll their customers onto fixed term default tariffs, rather than an evergreen (standard variable) tariff, following the end of the initial (non-default) fixed term tariff. Therefore, a consumer may have been on multiple default tariffs with the same supplier following the end of their initial non-default tariff. This will need to be reflected as part of any duration targeting.
[62] Ofgem's Consumer Survey 2019 reports 53% of consumers who do not use the internet say that they have never switched, as opposed to 27% for those who frequently use the internet.

4. Do you think that an opt-in switching scheme should focus on, or prioritise, targeting consumers who have been on a default tariff for longer durations? Please specify if you think any particular duration is appropriate.

2.3.3. Price targeting

Default tariffs are on average more expensive than non-default tariffs, but there is a lot of price variation within these tariff markets. Some default tariffs may be cheaper than some fixed-rate market offerings[63]. Furthermore, the price differential between a consumer's existing tariff and cheaper alternative market offerings is a strong predictor of whether a consumer will switch.[64]

An opt-in scheme may therefore be most impactful on consumers where the greatest saving can be prompted. The strongest case for targeting by price, is that consumers who are paying the most on their default tariff are experiencing the greatest loyalty penalty.

However, our aim for this scheme is to remove the barriers to market information and engagement for consumers who are currently disengaged with the market. Practically, focusing on price adds significant complexity to targeting decisions, as a complex contestable judgment is required on the "appropriate" price. The saving that may persuade a consumer to switch is something they are best placed to decide. It is the Government's aim to help facilitate effective competition so that the market produces fair outcomes for all consumers without the Government or the regulator making such a judgment or regulating on the basis of price.

We therefore currently do not think that consumers should be targeted based on the price they pay on their existing tariff. Though, if there are instances where the opt-in scheme cannot offer a better price than the default tariff a consumer is on, then the scheme is not likely to be an effective engagement tool for them and targeting them may not be a priority.

5. Do you agree that an opt-in switching scheme should not target consumers based on the price they pay for their existing default tariff?

2.3.4. Pre-payment meters (PPM) targeting

The PPM market has limited competition and switching and very few suppliers offer fixed term tariffs. Many suppliers only offer evergreen tariffs (there is no fixed term on the contract), and often only one of these. Suppliers are not price discriminating between their customers to anywhere near the same extent as the non-PPM sector. However, this does not indicate that there is no loyalty penalty.

For non-PPM tariffs, there is competition in the fixed term market where consumers are engaging with the market. Where competition is limited, for default tariff consumers, there is a loyalty penalty. In PPM market, more than 90% of customers are on default tariffs, according to

[63] Ofgem, State of the Energy Market 2019, page 36.
[64] Ofgem, Default Tariff Cap Final Impact Assessment 2018, page 91.

Ofgem's 2019 State of the Market Report[65]. Because of this, the vast majority are paying more, a loyalty penalty, than they would be in a competitive market.

Though the Collective Switch trials did not target PPM customers, given this limited competition, we feel that introducing an opt-in scheme to the PPM segment could be particularly beneficial. The scheme would create an opportunity for suppliers to engage with many PPM customers in one go, who have previously been particularly difficult to engage in the marketplace. Especially with the use of auctions (or other competitive processes, see section 2.4), this prospect could facilitate significant competitive behaviour between suppliers to offer competitive prices to consumers. We therefore think there would be particular merit in targeting the scheme at PPM consumers.

6. Do you agree that an opt-in switching scheme could be effective at creating new competition and market engagement in the PPM tariff market? Are there any PPM market considerations we should take into consideration?

2.3.5. Batch sizes and frequency

There are around 15 million consumers currently on default tariffs, including around 4 million prepayment customers. According to Ofgem's 2019 Consumer Survey, 78% of default tariff customers had been on their tariff for more than 3 years and 64% have never switched[66]. As outlined above, we intend for the scheme to have the ability to target default tariff consumers (as defined in section 2.3.1), potentially with a focus on those who have not switched recently.

Administering a switch between suppliers, or even internally, requires resources and the market's infrastructure can only handle so many switches within a short time frame. Though the Faster and More Reliable Switching Programme will be in place before the opt-in switching scheme begins[67]. Even if the infrastructure could accommodate much greater numbers, targeting the opt-in switching scheme at many consumers at once could cause a significant destabilising impact on energy suppliers. We therefore intend for the scheme to operate in batches. As discussed in section 2.1, we also think that the scheme should build incrementally, whilst we monitor its impact on consumers and the market.

The Collective Switch trials operated in batches, approaching 100,000 consumers in each of the second and third trials. Similar numbers or potentially more could be used for the scheme, but we do not think this should be determined until the framework has been established. We also discuss in section Annex C, how the batch sizes selected will also need to consider how many consumers a winning supplier(s) (in any competitive process) will be able to accommodate.

We do not think that the opt-in scheme framework (the focus of this consultation) should set the batch size and frequency of the scheme. We would like there to be flexibility for the scheme to be able to start small and incrementally grow in frequency and/or size as we test and learn from the initial batches, with consideration to the market and consumer impact and

[65] https://www.ofgem.gov.uk/publications-and-updates/state-energy-market-2019
[66] Ofgem, Consumer Survey 2019, Data Tables, Table 155.
[67] https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme/switching-programme

evolving market conditions. We therefore propose that the framework will allow the scheme to act as a tool, to be used as appropriate over time with batch size and frequency decisions being made and adjusted on an ongoing basis to reflect market and consumer circumstances.

We will also need to consider the status of other market interventions. For instance, if the price cap is still in place, then this would be a relevant factor when considering how to use the opt-in scheme at the time.

7. How do you think we should approach batch sizes and frequency? Do you agree with our proposed incremental, test and learn, approach to introduction?

2.3.6. Batches and energy suppliers

Once the framework for the opt-in switching is set up and the scheme is designed, decisions will need to be made about which consumers to contact for each batch, within the target scope as proposed in section 2.3.1. Section 2.3 also sets out how certain consumers could be prioritised within the scope of default tariff consumers, for instance, those who have been disengaged with the market the longest. Batch targeting decisions will also need to be made in relation to energy suppliers.

For instance, a batch could require all suppliers to participate by sharing relevant customer data (see section 2.7) for a certain number of consumers proportionate to their market share or their share of consumers defined as disengaged. Or, a batch could focus on a subset of energy suppliers, which may have administrative benefits for both energy suppliers and the Delivery Body. This may reduce the administrative burden for energy suppliers who, rather than being required to participate in each batch by submitting a small number of consumers each time, would be required to submit a greater number but less frequently.

If batches focus on subsets of energy suppliers, the fewer each batch focuses on the greater the likely impact on the suppliers targeted. Focusing on, for example, one supplier per batch may lead to many consumers switching from them in a short period. Approaching one supplier at a time would also likely mean that the reach and scale of the scheme is constrained by the pace of the batches. For example, if there are 60 energy suppliers and ten batches a year then the last supplier to be targeted may have a six-year advantage over the first supplier.

An evolving and flexible approach for each batch could also be applied. For example, given smaller suppliers are generally likely to have a small number of default tariff consumers, it may be appropriate to group, for instance, ten into one batch. Whereas batches that include larger suppliers could include a smaller number of suppliers.

If the scheme is not targeting all suppliers in each batch, decisions will need to be made about which suppliers should be targeted first and prioritised in subsequent batches. This could be based on, for instance, which suppliers have the greatest proportion of disengaged consumers. Or, other factors could be considered, for example, relating to helping achieve the UK's 2050 net-zero target.

As discussed, these decisions will be taken at a later point, but we would like to hear stakeholders' initial thoughts on how suppliers should be targeted.

8. **Do you think that each batch of the opt-in switching scheme should target all energy suppliers or should batches focus on subsets of suppliers?**

9. **If batches focus on subsets of suppliers, on what basis should suppliers be prioritised for targeting?**

2.4. The prompt and the competitive process

The Collective Switch trials included two models of prompting participating consumers to engage with the market, which differed from a background policy and consumer perspective: Collective Switch and Open Market. From a policy perspective, the Collective Switch approach invited energy suppliers to bid into an auction to be the winning exclusive tariff that would then be offered (the prompt) to the batch of consumers. The Open Market approach removed the need for this auction by not offering an exclusive tariff, instead using existing market offerings.

From a consumer perspective, both approaches highlighted the personal saving available from switching, with consideration to their existing arrangement. In the Collective Switch, this potential saving was available from switching to the exclusive winning tariff. In the Open Market approach the potential saving was available by switching to the most competitive available offer on the PCW's platform at that time.

From a consumers' perspective the approaches were quite similar, both had an initial contact letter, a savings letter and a reminder letter. The initial contact letter informed consumers they were on an expensive tariff and gave them the option of opting out of follow-up communications. The savings letter outlined the personalised savings, method of switching and a deadline for switching. The reminder letter reiterated the deadline for switching. The primary difference between the Collective Switch and Open Market approaches for consumers was the exclusive tariff option (Collective Switch) versus the signposting to pre-existing tariffs (Open Market).

In the two trials where the Open Market approach was tested there was a 17.5% and 24% switching rate, five times higher than the control groups. The Collective Switch approach was more successful with rates of 24% and 29.5% (seven times higher than the control groups) respectively in the trials where they were compared[68]. The average savings for the Collective Switch approach were slightly higher (£263 against £230).

Ofgem also trialled other methods of prompting consumers in their CMOC trials[69]. Here the cheaper three tariffs suggested to consumers were simply chosen by finding the cheapest three offers that a PCW could offer that consumer on a particular date.

[68] https://www.ofgem.gov.uk/system/files/docs/2019/09/collective_switch_slides_for_publication.pdf
[69] https://www.ofgem.gov.uk/publications-and-updates/cheaper-market-offer-communication-trial

As seen in Ofgem's trials, while the Collective Switch model produced higher switching rates, there are relative benefits to each of these approaches.

The Collective Switch approach has the advantage of being relatively simple for consumers as a single tariff is the prompt. The approach also allows the opportunity for suppliers to compete to offer a good deal to consumers in relatively uncompetitive parts of the existing open market, for instance the standard credit and paper bills segments. The competitive process and exclusive tariff aspects of this approach could also enable the Government and/or Ofgem to have more control in terms of customer service offering and financial stability of the prospective supplier.

The Open Market approach has a greater focus on encouraging customers to engage with the marketplace, but requires more effort on their part. It is likely to result in participating consumers switching to a wider array of tariffs than the Collective Switch model, with more potentially choosing an option that is tailored to their individual needs. This approach would likely also require less administration to deliver than the Collective Switch approach, as it would likely rely on the tariffs already present in the market, rather than the setting up and running of new competitive processes.

We think that at this stage the method of determining the prompt should be left open, for a few reasons:

- We think that there are different merits to both approaches (as set out above) and that both should be available options. The Open Market approach is simpler to administer but relies on the competition and market offerings already present in the market. The Collective Switch approach may be useful in creating new competition, especially in segments of the market where it is currently relatively limited, for instance for PPM tariffs.
- As the opt-in switching scheme is introduced we would like there to be a 'test and learn' approach as understanding of the most appropriate approach evolves; there should therefore be flexibility to enable the Government and/or Ofgem to evolve their approach incrementally.
- There may be alternative better ways than these two approaches to determining which tariff should be suggested to the consumer, other options should not be closed off this early.

If either something like the Collective Switch or Open Market approach, or both, was adopted, there are various design questions around each. We propose that these are determined at the later design and implementation stage, with further consultation. However, there are some key prompt questions, mostly related to how a winning tariff might be determined, that we would like to dig into now that could be set at the framework level, which we ask for views on in the following sections. We would also like to hear initial views from stakeholders on some of these design questions to inform our thinking of how the framework should look.

If an auction is used as part of any competitive process, the design will also need to consider whether bids should be transparent or confidential. If confidential, there will need to be

consideration to what knowledge the Delivery Body may have of supplier bids and how bidding data may be protected. The design will also need to minimise the risk of collusion between market participants.

In Annex C, we set out further proposals and questions on the prompt and the competitive process. This includes, if the consumer is prompted to a specific tariff chosen through a competitive process, whether tariffs should be compared on non-price variables and if there should be more than one tariff winner and/or prompt; and if incumbent suppliers should be able to try and 'win-back' their customers alongside the opt-in prompt.

10. Do you agree that the framework should allow for flexibility so that the policy lead (the Government and/or Ofgem) will be able to choose what type of prompt is used? Do you have any comments on the prompt options described, or any other methods?

2.5. Role of Delivery Body

In the Collective Switch trials a PCW (Energyhelpline) was selected through a competitive process to deliver much of the operations, working closely with Ofgem. We intend for the full scheme to include a Delivery Body, who will likely play a similar role to the PCW's in the trials. This body will run the operations of the scheme and be the intermediary between the incumbent supplier, winning supplier and consumer.

The specific actions required will depend on many of the questions set out in this consultation. This section considers how that role should be set up, what type of body could play the role and how they might be financed, appointed and monitored.

2.5.1. Type of body and financing model

In the Ofgem Collective Switch trials, Ofgem ran a competitive tender and a PCW was selected to act as the Delivery Body. The Open Market approach used in the trials made use of existing supplier offerings on the PCW's platform, so that may be difficult for a different type of body to deliver in the same way. The Collective Switch approach created an auction to pick a tariff as the prompt, which could be delivered by various bodies, but the letter consumers received directed them to the PCW to make the switch, at which point they were also presented with other tariff options available in the open market, which many chose instead of the auction winning tariff.

A PCW was well suited to deliver the design of the trials as they already perform a very similar role in the existing marketplace. However, we would also like to explore other options of delivering the wider scale opt-in scheme. The Delivery Body could be a private body, a non-profit organisation, or a public body such as a Government owned company (or alternatively BEIS or Ofgem). There are also different approaches to funding these options. In this section we describe three approaches that could be used:

- A commission-based funding model run by a private company or non-profit organisation.

- A fee-based funding model run by a private company or non-profit organisation.
- A Government company[70], or another public body.

Third party intermediaries in the energy market who act as a go-between between suppliers and consumers often have a commission-based business model for servicing this role. This approach was used effectively in the Ofgem Collective Switch trials and could be replicated for the full scheme. A commission model would shadow how the existing market operates, limiting the need to create a new funding mechanism and indicating it is likely to be a financial prospect for existing companies who are already well practised at using existing market mechanisms to facilitate tariff switching.

However, there are policy questions and risks with this approach. For instance, as discussed further in section 2.5.2, the scheme may be putting the selected Delivery Body in a privileged position over rivals, which could enable them to charge excessive commission rates, which would result in higher prices for target consumers. Or, if there are different rates of commission between suppliers the Delivery Body may be incentivised to favour one supplier over another.

To minimise the acquisition cost and to create a level playing field between suppliers for the opt-in scheme, the Government and/or Ofgem may need to decide what level of commission would be appropriate. The level would need to incentivise bodies to bid for this role but also limit the cost to consumers. Such a decision will need to consider the likely cost of administering this role against the expected number of switches the scheme will produce, which commission would be paid against.

Rather than determining the commission level with asymmetric information, the Government and/or Ofgem could make the commission level part of the competitive process. Among other variables, such as best service, prospective Delivery Bodies could compete to offer the lowest commission level. This would put the question onto the prospective bodies, of the level of commission they think will enable them to make an acceptable profit (based on their assumptions of the expected revenue) given their expected cost calculations, which they should be better placed to assess than the Government or Ofgem.

This may be the best approach to minimise the cost to consumers and finding the most efficient organisation to be the or a Delivery Body. One risk of this approach is that bidding organisations miscalculate expected returns and/or costs and end up not being able to deliver the scheme due to significant losses. Another risk is that only a small number of bodies compete for this role and, in light of this limited competition, only offer high commission rates. One way of avoiding this would be to set an upper limit, which could be determined based with consideration to existing commission rates in the PCW market.

Given these risks, alternative approaches should also be considered. We have currently identified two alternative options: contracting out to a Delivery Body and paying them a fee to operate this role, and excluding commission on the switches made through the scheme; or administration of the scheme by a public body. The latter could involve creating a Government

[70] The creation of any new public body will be subject to normal Government clearance processes.

Company to run the administration of the scheme, for instance, in a similar way to the delivery of Contracts for Difference and aspects of the Capacity Market.

As noted above, we are also considering the option of BEIS or Ofgem acting as the Delivery Body. These options could help avoid some of the complexity of creating a new Government company, though, some logistical challenges would remain, such as potentially setting up a price comparison service. If Ofgem were appointed to act as Delivery Body, this would also need to be compatible with its role as the independent regulator.

One difference between these approaches and a commission model is that these do not include a marginal financial incentive for the Delivery Body (or Bodies) to encourage switching. As discussed elsewhere, the principal aim of the scheme is to remove the barriers to market information and engagement for consumers who are currently disengaged with the market. Switching (internally with the same supplier or externally) is not a perfect measure for whether this aim has been met, but a commission model may be best at incentivising a Delivery Body to be as effective as possible at getting consumers to engage with market offerings.

Without a marginal gain for each switch, these models may result in the Delivery Body(ies) giving greater focus on other aspects of the scheme. For example, enabling the scheme to reach as many consumer segments as possible with suitable consumer protections (see section 2.6).

Using either of these approaches may require an alternative funding method to commission - potentially a supplier levy - which may be complex to set up and administer. A commission-based approach also has the advantage of ensuring that suppliers face fair acquisition costs through the scheme, so that the market is not distorted by excessive consumer churn. Using an alternative funding approach would likely mean this cost is paid across energy consumers.

Relative to a commission model, using a set fee would provide greater certainty to prospective bidders of the revenue they would receive for taking on the role. However, if there is the prospect of consumers participating in the scheme returning to the same body for other services or future switches, competing bodies will also take into consideration this wider revenue opportunity. If and how this might be enabled is explored further in section 2.5.2 and 2.7.2. The Government and/or Ofgem would need to determine what a suitable fee would be, and therefore would need to develop a good understanding of the likely costs.

Creating a Government Company could be lengthy and complex, as it would require creating the body (including recruitment) and setting up processes and systems from scratch. Similar challenges would exist if BEIS or Ofgem took on this role themselves. Contracting out to a body who already plays a similar role in the marketplace would likely help enable the scheme to be introduced sooner[71]. Though, tendering and contracting has its own complexities, such

[71] This is assuming a body already playing an existing role would win in any competitive process and could compete. Section 2.5.2 considers the option of excluding such existing market players on competition grounds.

as creating a competitive tendering process, developing a contractual framework governing how they perform their role and then monitoring their delivery.

The Open Market approach (see section 2.4) may not be possible for a public body to facilitate unless they set up a price comparison service themselves. Without doing that, the public body option may only be suitable where the switching scheme's prompt is a particular tariff(s) that has won through a competitive process.

Even in the Collective Switch trials, many consumers who did switch did not take up the suggested tariff, as the communication also provided links to the website and helpline of the PCW that was acting as Delivery Body. As the qualitative research found, many contacted the PCW and found cheaper offers and/or ones more fitting to their preferences[72]. This would be difficult to replicate with a public body without it developing a price comparison function, unless the communication also suggested contacting a PCW if they'd like to consider other tariffs. Though, with multiple bodies involved, the prompt and scheme could start to become confusing.

However, the public body approach does have potential benefits over using an externally contracted body. Using a public body could help mitigate some of the competition risks discussed in section 2.5.2. Though, the relationship between the role and functions of the public body and private switching services would still need to be considered from a competition perspective. A public body might also have a greater focus on its obligations relating to consumer protections.

One of the options we highlight in 2.5.2 to mitigate competition risk if private body was used, is having multiple Delivery Bodies. There may be other benefits from this option, for instance, allowing regions to run their own schemes or having bodies that specialise in targeting particular consumer segments, such as PPM.

An appointed public body would also likely act as the permanent Delivery Body, and this would provide a greater long-term focus on the scheme than a body is likely to give who wins a temporary contract. This would also avoid the costs of any regular re-tendering and of setting up the scheme again with new winning third parties. The Delivery Body's duties could be solely to focus on optimising the delivery of the scheme to meet its legislative/regulatory aims and to work with the Government and/or Ofgem to improve the scheme over time. Though the public body approach would exclude the element of competitive appointment present in the other two options, which could result in a less efficient Delivery Body, these benefits could lead to better value to consumers in the long run.

The type of body and financing model we use is a key question for the framework of the scheme, and likely the legislation. We would like to hear stakeholders' views on options before deciding.

[72] https://www.ofgem.gov.uk/system/files/docs/2018/11/cs1_qualitative_report_for_publication_0.pdf

2.5.2. Potential competition risks and mitigations

If a commercial based framework (either through commission or a fee) was selected, it would need to be carefully designed to limit competition risks for the existing third-party intermediary market. For instance, should a PCW be granted this role, the proportion of energy switches going through that PCW would likely rise. If the commission level is not regulated by the scheme's design (or if the regulation only covers limited parts of their platform), then a PCW who is Delivery Body may have significant leverage when negotiating commission levels with suppliers about offering tariffs through their platform. Being the 'switching provider' for the Government and/or Ofgem led switching scheme may also provide a reputational advantage over competitors.

A financial incentive for being the Delivery Body, especially if they were a PCW, may be the ability to, follow up with the consumer again once their new fixed term tariff ends (assuming they switch on a fixed term tariff). As set out in section 2.7.2, though follow up communication may support long term market engagement, we do not think that the Delivery Body should be permitted to use the data they have gained access to perform the scheme's functions, to promote or encourage market engagement with non-switching scheme services it offers.

Section 2.7.2, sets out how we are considering whether the Delivery Body should provide similar follow-up engagement as part of the opt-in switching scheme. Competition risks will need to be taken into consideration if this is enabled. Even if it isn't, if the Delivery Body offers private services (such as price comparison) separate from the scheme, it is possible that a consumer who responds to the opt-in scheme's prompt may choose to use such services in the future, without encouragement.

The scheme may be putting the selected Delivery Body(ies) in a privileged position over rivals for the duration they hold this role and potentially for subsequent years. The competition impacts of this will need to be considered carefully. There are a variety of options that could be considered to mitigate against these competition risks, including:

- It may be possible for multiple Delivery Bodies to be active at once so there is no monopoly on the role.
- If a commission based approach is used, the commission level could be capped for the purposes of switches made through the switching scheme. The level of commission could be a consideration as part of the competitive process when choosing the most appropriate Delivery Body(ies). Limiting commission has the added benefit of limiting the cost to consumers.
- Having regular re-tenders for the role would limit the chances of any one body holding the role for an extended period. Though, this would increase the level of administration required in running the scheme.
- The role could be limited to bodies who do not currently run a similar commercial function. But then many of the potential advantages of using a commercial model may be lost.

- If an existing PCW or third-party intermediary with similar functions were to be allowed to bid to take on the role, we could require them to operate in this role as a separate legal entity. This would allow bids from bodies who already have experience playing the type of intermediary role parts of the scheme involve, whilst minimising the competition risks.

We would like to hear stakeholders' views on the potential competition impact and potential mitigations.

We would also be interested in views on the extent to which appointing a Government Company or another public body would help mitigate these risks, the potential competition implications of this approach, and how these could be managed.

11. Do you think a Government Company/ public model or a commercial model should be used for the Delivery Body(ies)? If a commercial body is used, do you think that a fee or commission based approach would be better? Are there any other models you think we should consider?

12. If a commercial based framework (either through commission or a fee) is selected, a) to what extent do you think there will be competition risks? b) to what extent to you think the competition risks should and could be mitigated? C) what are your thoughts on the listed options of mitigation? d) how else might competition risks be mitigated?

13. Do you think that appointing a Government Company (or another public body) as Delivery Body would help mitigate the identified competition risks? Do you think there are any competition implications from appointing a Government Company (or another public body) to this role? If so, how might these be managed?

2.6. Consumer protection

When considering the more detailed design of how the scheme will be implemented, after we have determined the framework, it will be particularly important to ensure there is appropriate consumer protection. The focus of this consultation is on the framework, but we have shared some of our current thinking on consumer protections and would like to seek stakeholder's views early on.

2.6.1. Scheme inclusion

The Collective Switch trials excluded certain consumer groups, for instance, those on Warm Home Discount (WHD), restricted meters, single fuel customers and PPM. As this scheme will potentially have the ability to reach all consumers on default tariffs, there will need to be careful design with consideration to these customers and those in vulnerable circumstances.

Currently, Core Group and Broader Group WHD customers risk losing their rebate the following winter if they switch to a supplier with customer numbers below the WHD thresholds

before the qualifying date for a scheme year. Additionally, Broader Group WHD customers risk losing their WHD rebate if they switch to another WHD supplier that has already allocated all of their WHD Broader Group rebates in that scheme year.

The Government has committed to extend the WHD scheme to at least 2025/26 and is currently consulting on proposals to reform the scheme, including how to reduce and remove the supplier thresholds[73]. Future reforms to the WHD scheme and the design of the opt-in switching scheme will need to take into consideration the risk of consumers losing their WHD through switching. Our aim is that WHD eligible consumers can be confident of switching to a cheaper tariff with any supplier without losing their WHD rebate.

The Opt-in Collective Switch trials included consumers on the Priority Service Register[74] (PSR) and found consistent switching rates across PSR and non PSR consumers, even though in general PSR customers tend to switch less. However, the trials did exclude PSR customers with special communication needs. The PSR codes allow identification of these consumers but this data is classified as special category data in UK GDPR[75], which needs more protection because of its sensitive nature. The Government and/or Ofgem will need to consider how the needs and privacy interests of these customers can be accommodated within the scheme.

The scheme's design will also need to consider how the scheme can include the digitally excluded. In the trials, the Delivery Body offered a phone line to prompted consumers to make the switch and/or consider market offerings; 75% of participants used this option. A phone line may also be helpful for consumers who have questions or are confused. Postal returns could also be used as a method of opting into a switch, though this was not included in the trials.

It will be important for the Government, Ofgem and the Delivery Body to monitor the outcome for consumers as the scheme is implemented and adapt its design and processes as appropriate, with particular attention on consumers in vulnerable circumstances.

We would like to hear stakeholders' views on how we can design the scheme to help enable effective delivery across consumers.

2.6.2. Delivery Body requirements

The scheme may involve consumer personal data being transferred to the Delivery Body from suppliers (see section 2.7). The Delivery Body should therefore be required to have appropriate data security certifications and be subject to clear requirements as to how data is stored, what purposes it can be used for and when it has to be deleted.

Customer service will be important for the success of the scheme and to help consumers understand the scheme and their options. This could include setting requirements in relation to the phone service the Delivery Body will operate. Should the Delivery Body be selected through a competitive tendering (see section 2.5), customer service should be a criteria in

[73] https://www.gov.uk/government/consultations/warm-home-discount-better-targeted-support-from-2022
[74] The PSR is a free non-financial service that suppliers provide for customers in need. This might include gas safety checks, meter reading services, advance notice of planned power cuts.
[75] https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/

selection. There will also need to be requirements to enable the Government and/or Ofgem to monitor the performance of the Delivery Body, not just on customer service.

The design of the scheme should help ensure switching consumers are assessed for eligibility to be on the PSR of the winning supplier. Some third-party intermediaries already have processes in place with suppliers for identifying such consumers and this might be possible to include as part of the Delivery Body's role. Incumbent supplier data may not always be suitable for this purpose because vulnerabilities can be dynamic.

2.6.3. Supplier requirements

Beyond meeting the standard SLC, certain criteria of eligibility could be set for a supplier to be able to bid into any competitive process or offer tariffs through the scheme. For instance, there could be a prequalification process for the competitive process.

Depending on what is possible to measure, standards could include: financial stability, ability to accommodate a large influx of new customers and customer service. As we also intend for the scheme's design to help facilitate reaching the UK's 2050 net-zero target, we could also include standards relating to a supplier's performance or progress on schemes (such as smart meter roll-out) important to reaching our decarbonisation targets. If a prequalification process is created there will also need to be consideration to whether an appeal process (or dispute resolution mechanism) should be created.

At the very least the scheme will need to include processes to check that suppliers bidding into any competitive process will be able to accommodate, with good customer service, the expected number of consumers that may switch to them during the relevant time period.

Such checks might be easier to administer where the model used is something like the trial's Collective Switch, with suppliers bidding to be the winning tariff, relative to the Open Market approach. With the Open Market approach, in the trials, consumers were only advised of the potential saving available to them from switching, with a prompt to visit the PCW (Delivery Body); this makes it more challenging to predict which suppliers may see a demand surge.

Ofgem's Supplier Licensing Review[76] has already decided to set up milestone assessments of whether the supplier has appropriate systems to take on more customers when they reach 50,000 and 200,000 customers. These regulatory assessments, and potential enforcement where it appears that the supplier is contravening or likely to contravene its obligations, may be sufficient to ensure suppliers are prepared to accommodate potentially large numbers of new consumers through being successful in the opt-in switching scheme. We will consider if any further protection for the opt-in scheme is appropriate, with consideration to the impact of the Supplier Licencing Review milestone assessments

[76] Pages 13-15: Decision on the Supplier Licensing Review: Ongoing requirements and exit arrangements Ofgem: https://www.ofgem.gov.uk/publications-and-updates/decision-supplier-licensing-review-ongoing-requirements-and-exit-arrangements

In the Collective Switch trials, bidding tariffs could not include an exit fee exceeding £30 per fuel. Exit fee requirements could also be included in the full scheme.

2.6.4. Temporary loyalty penalty avoidance

As discussed above, the opt-in scheme will be aiming to remove the barriers to market information and engagement so that consumers who have not been engaged and are at risk of experiencing a loyalty penalty are more likely to proactively switch to a cheaper deal. However, there is a risk that such consumers who take up the opt-in switch tariff offer (assuming it is a fixed term one), then roll onto a more expensive default arrangement after the fixed period, and therefore only avoid a loyalty penalty for that period. It is even possible that some suppliers will adopt a strategy of trying to acquire these customers (many of whom will have been long term disengaged and may not readily engage with the market again) through the switching scheme, so that after the fixed period they can then increase their prices.

Ofgem's follow-up studies suggest that the Collective Switch trial interventions led to greater long-term market engagement for those who responded to the initial prompt[77]. However, the consumers who switched through the PCW (acting as Delivery Body) were re-prompted just before their tariff end date, and their subsequent switching was much higher (at 69% versus 38%) than the consumers who switched through other routes, who may not have been re-prompted.

Though we do not know if the consumers who switched through other routes were re-prompted, any re-prompting was likely lower for those who switched directly with a supplier, who generally do not encourage their customers to switch, except when required. We do know that trials participants who opted into receiving additional prompts and a phone call from the Delivery Body were significantly more likely to re-switch than those who did not, who only received an email and/or letter (73% versus 59%).

This indicates that the greater the level of re-prompting the greater the chance of subsequent switching. If and how consumers could be re-prompted to help facilitate sustained market engagement is discussed in section 2.7.2.

If the opt-in scheme is able to effectively engage with high consumer volumes each year, once incrementally scaled, then a consumer who rolls onto a more expensive default tariff, can be approached again by the opt-in scheme to remind them of the benefits of switching.

Tariffs suggested to consumers by the scheme could be required to have a relatively long fixed term period (e.g. 2 years) to lengthen the period before they are rolled onto a default tariff.

As discussed in our introduction (section 1.4.3), removing barriers to market information and engagement and the impacts of the energy transition on consumer retail market engagement, may not sufficiently address the factors that have caused a loyalty penalty. Which is why we

[77] 63% of those who switched during the trial, following a prompt, switched again in the 17 subsequent months. The subsequent switching rate for the control group (who received no prompt) was much lower, 31% of those who switched during the trial then subsequently switched and 33% who didn't initially switch then went on to do so during the 17 month period. Of those who received the initial prompt but didn't switch during the trial, only 33% switched in the 17 subsequent months. https://www.ofgem.gov.uk/publications-and-updates/prompting-sustained-engagement-energy-tariff-switching

are also considering how default arrangements might be reformed to enable greater competition as an alternative or additional option.

14. Please provide views on the consumer protections we are considering. Are there other protections that we should consider?

2.7. Data processing and consumer communication

The consumer data we think that suppliers might need to be required to transfer (and to whom) and the ways this data may need to be used, will depend on many of the framework decisions we are consulting on in this document. The personal data transferred and used should be adequate, relevant, and limited to what is necessary for the administration of the scheme.

In the trials, the Collective Switch auctions were segmented by payment type and online/offline[78], as suppliers experience different costs by this segmentation and therefore reflect this into their pricing. We expect that a full scheme would also segment its competitive process (where one is used) in a similar way.

We anticipate the data related aspects of the scheme will require legislation and licence modifications to establish a new information sharing gateway and impose obligations in relation to the sharing and use of information for scheme purposes. The information we consider is likely to need to be shared for the purposes of the scheme and the ways this information may be used is discussed in more detail in this section.

We note that other information law requirements, such as data subject rights and restrictions on direct marketing, will also need to be factored into the design and implementation of the scheme. We have not focused on these requirements in this section as they are matters that will be addressed in subsequent implementation decisions under the framework we are consulting on. However, we would still welcome views on how wider information law requirements are relevant to the design of this framework.

In Annex D, we set out further proposals and questions on the opt-in switching scheme data processing and consumer communication. This includes, how consumers should be selected for participation whilst minimising any cherry picking and if there should be an initial opt-out to allow consumers an early opportunity to exit the scheme before their data is shared with the Delivery Body.

2.7.1. The prompt and consumer response

In the Ofgem Collective Switch trials, the prompt communication was sent and addressed from the PCW (acting as Delivery Body), but the switching rate, by a significant margin, was greatest when the letter was fronted with the branding of the incumbent supplier relative to

[78] The auctions were not segmented by region, but the price that suppliers bid with was then subject to regional variation when offered to the consumer, according to the regional cost difference.

Ofgem branding[79]. The Cheaper Market Offers Letter (CMOL) trial[80] demonstrated greater switching rates when letters were sent from the incumbent supplier relative to Ofgem.

The qualitative research alongside the Collective Switch trials looked at how participants felt about their existing supplier's involvement in the communication[81]. For those who received the exclusive offer letter from the PCW with the incumbent supplier and PCW branding, 13 of the 27 interviewees in this arm incorrectly recalled the incumbent supplier as the sender rather than the PCW. Some of the 27 questioned the supplier's motives for sending the letter, with some wondering if the supplier had been forced to do this and some angry with the supplier.

The switching rate findings indicate that the best option to maximise market engagement is very likely to be either communication from the supplier, or by the Delivery Body with the supplier's branding included. However, this route may also create some consumer misunderstanding about who the messenger is and anger with the incumbent supplier.

Given the aims of the scheme, we propose that the communication is either sent by the incumbent supplier or by, and addressed from, the Delivery Body, but also including the supplier's branding. During the design phase (following setting up the framework), it will be important to consider how the communication can be as clear as possible, given the findings from trial participant interviews.

In the Collective Switch trials, the Delivery Body sent the prompt, which included the personalised price comparison calculation between the consumer's existing tariff and the relevant auction winning tariff; or, for the Open Market approach, the cheapest tariff available to that customer on the Delivery Body's price comparison website platform.

For the Delivery Body to send the prompt in the full opt-in scheme, data held by the incumbent supplier will be needed. This will require data sharing mechanisms to be established to allow and, where necessary, require data to be shared with the Delivery Body for the purposes of the scheme. Table 1 sets out what data we think the Delivery Body would require from the incumbent supplier to perform the necessary functions.

Table 1: Proposed data that the Delivery Body would require from the incumbent supplier to perform prompt communication with consumer.

Function	**Data required**
Contact the consumer.	Contact information
Make a price comparison between the existing tariff and what the opt-in scheme	Information on existing tariff, including so that the Delivery Body can determine which prospective tariff the existing one should be compared to:

[79] 26.9% switched when there was incumbent supplier branding, relative to 15% when Ofgem branding was exclusively used and 18.5% when the initial prompt came from Ofgem and the reminder came from the supplier. In both cases the communication text highlighted that the communication was authorised by Ofgem.
[80] https://www.ofgem.gov.uk/publications-and-updates/results-cheaper-market-offers-letter-trial
[81] Slide 31: https://www.ofgem.gov.uk/system/files/docs/2018/11/cs1_qualitative_report_for_publication_0.pdf

is prompting to the consumer.	• Standing charge • Unit rate • Payment type. • Meter type. • Online or offline customer. Annual consumption data will also be required so that a personalised comparison can be made based on usage.
Ensure that certain consumers, such as those on WHD or with special communication needs, are identified who the scheme may include added or alternative processes for.	• Whether they receive, or are eligible for, WHD. • Whether they have special communication needs. The latter could qualify as special category data for UK GDPR purposes.

Once prompted, the consumer can respond by contacting the Delivery Body and, as in the trials[82], the Delivery Body can quickly locate the consumer in their database and provide advice about tariff options available and initiate a switch; allowing a simple consumer journey.

We are also considering whether a framework could be created where the incumbent supplier would provide the prompt to consumers, which would not require the Delivery Body to have access to consumer data until the consumer contacts the Delivery Body and opts into sharing. With this approach the incumbent supplier would be required to complete the functions in Table 1, including making a price comparison for the consumer.

Another advantage of requiring incumbent suppliers to make the communication is that the systems and processes for engagement are already in place with these consumers (e.g. supplier mailing lists and communication platforms), which would otherwise need to be set up for the Delivery Body.

Ofgem already requires suppliers to send “against interest” correspondence reminding people to switch to cheaper tariffs and to consider switching, for instance the Cheaper Tariff Message (SLC 31F.6). So, requiring suppliers to send this type of prompt would not be unprecedented.

However, this approach provides a few challenges. The supplier would need to administer the price comparison necessary to create the prompt. With the Collective Switch type approach (where a winning tariff is selected through a competitive process, e.g. auction), the supplier could be informed of the winning tariff across segments and the supplier could make a savings calculation based on the consumer’s existing tariff and energy use.

[82] In the trials the PCW asked the consumer for their name and post code, which enabled them to locate the data already provided to them by the incumbent supplier.

For the Open Market approach (or something similar), the supplier would need to calculate the cheapest market offering available for each consumer based on their energy consumption so that the saving comparison relative the consumer's existing tariff can be communicated. Suppliers would need access to tariff market data and a method of tariff comparison to perform these calculations. Suppliers are currently required to make a tariff comparison through the Cheapest Tariff Message, though only against their own tariffs. During the CMOC trials suppliers were directed to calculate the saving then prompt consumers and most of them contracted PCWs to perform those calculations.

This may be resolved through co-ordination with the Delivery Body, so that the supplier can access the details of alternative market offerings. It might be possible for the Delivery Body to create a tool to generate content (a saving figure, based on the tariffs available in the open market) for suppliers in response to their input data (tariff rates, energy usage, payment type, online/offline and location).

If the Delivery Body is instead responsible for the personalised calculations, it would be in their interest to identify the best possible saving for each consumer, whereas that would not be the case for the supplier. If suppliers calculate the saving, then the oversight may be more limited. The communication itself would require the use of templates and strict requirements, for instance, on timeframes, with monitoring and enforcement to ensure the scheme is effectively delivered.

During Ofgem's various retail market engagement trials they experienced some suppliers not sharing data to the required standard, which can limit the ability of the prompt to produce accurate saving projections. In the Collective Switch trials, it was possible to mitigate this, to some extent, by requiring the suppliers to perform data cleaning when sharing it with the Delivery Body, which may not be possible when the data isn't shared before the prompt.

If the incumbent supplier administers the prompt, when consumers respond by contacting the Delivery Body, the Delivery Body will need the consumer's data to perform its function of advising on market offers and facilitating the switch. This process is similar to the less successful CMOC trials, where customers had to provide their data when contacting a supplier or PCW of their choice, adding significant hassle to the switching process.

When comparing the results between their trials[83], Ofgem said that their qualitative evidence shows that reducing the hassle of switching by sending the consumer's data to the Delivery Body seems to be partly responsible for the higher switching rates in the Collective Switch trials[84]. To repeat the success of the Collect Switch trials, it is likely to be important to replicate this simplified consumer journey, which the data sharing design enabled.

If the necessary consumer data for comparison (in Table 1) can quickly (i.e. seconds) be shared from the incumbent supplier to the Delivery Body when the consumer contacts the Delivery Body, then it may be possible to replicate the Collective Switch trial's simplified

[83] It is not possible to be conclusive on what made the Collective Switch trials more effective as the differences between the trials were not tested in isolation.
[84] Page 37. https://www.ofgem.gov.uk/system/files/docs/2019/09/cross_trials_paper_report.pdf

consumer journey, without data processing until the consumer contacts the Delivery Body. Enabling this type of data sharing is the aim of the Ofgem's Midata scheme, but there is uncertainty around how the Midata programme will look and how it could link up with the opt-in switching scheme[85].

For the opt-in scheme to be effective at tackling the barriers to market information and engagement, we think it is essential for the consumer journey to be as simple as the Collective Switch trials. It is currently unclear that this will be possible without setting up processes for consumer data to be shared from the incumbent supplier to the Delivery Body before the consumer is prompted.

Given the prompt communication also requires personalised tariff comparison, for the reasons stated above, the Delivery Body would be better placed to send this communication than incumbent suppliers, which we think requires the Delivery Body to have access to the data in Table 1.

However, we would like to hear stakeholders' views on these options and how the identified challenges with requiring incumbent suppliers to provide the prompt to consumers might be resolved.

If consumer data is not shared with the Delivery Body until the consumer responds to the prompt, then it may not be necessary to include the first step of asking consumers if they would like to opt-out from their data being shared for the scheme's purposes (Annex D).

15. Do you think that the prompt should be administered by the incumbent supplier or the Delivery Body with the incumbent supplier's branding included on the communication? Do you think the identified challenges with requiring incumbent suppliers to provide the prompt to consumers can be resolved, if so, how?

16. If the Delivery Body is chosen to send out the prompt, do you think that the proposed functions and the data required by the Delivery Body set out in Table 1 are appropriate? Are there any of other data fields that you think should also be included?

2.7.2. Potential follow up engagement

As set out in section 2.6.4, the Collective Switch Trials follow up studies suggest that participants were significantly more likely to switch again after the end of their new fixed term tariff when they were re-prompted by the PCW to do so and that the extent of re-prompting (for instance an email/letter and a phone call) also impacted re-switching. Ofgem concluded that re-prompting consumers at their tariff end is vital to maximise the sustained impact of an opt-in switching scheme[86].

[85] Ofgem's work on Midata has been paused: https://www.ofgem.gov.uk/publications-and-updates/update-midata-energy-programme Latest update available here: https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/midata-energy-project

[86] https://www.ofgem.gov.uk/publications-and-updates/prompting-sustained-engagement-energy-tariff-switching

When a consumer uses a PCW to facilitate a switch, they are often asked whether they would like to opt-in to allowing the PCW to contact them in the future with prospective marketing. If they consent, when their new fixed term energy tariff expires and they move onto a default tariff, the PCW may then highlight the potential savings available to them from switching.

The data that the Delivery Body may have access to perform its functions to implement the opt-in switching scheme should only be used for those functions. Therefore, we do not think that the Delivery Body should be permitted to use this data to promote or encourage engagement with non-switching scheme services it offers, such as a private switching service if it is a PCW.

Of course, if the Delivery Body is a PCW, it is possible that a consumer who responds to the opt-in scheme's prompt may choose to use that PCW's private switch service in the future, without encouragement. The potential competition impacts from this are discussed in section 2.5.2.

Given the evidenced benefits of follow-up engagement, we are considering whether the Delivery Body should provide similar follow-up engagement as part of the opt-in switching scheme. Follow up engagement is likely to be of most use where the consumer is about to or has returned to a default tariff, as a means of re-engaging the consumer with the retail market to make an express choice about their tariff, and, potentially, a saving.

The shared data (e.g. usage and tariff information) from the previous incumbent supplier for the initial prompt will be out of date by that point. So, to enable a follow-up prompt the scheme will likely need to follow a similar, or the same, route as the initial prompt to access the updated consumer data held by the new incumbent supplier, rather than the data used for the initial prompt from the previous incumbent.

To follow-up consumers who have previously switched through the scheme, a record will likely need to be kept of which consumers switched through the scheme (or some method of identifying them), which supplier they switched to, whether they switched to an evergreen or fixed term tariff, and the duration of any fixed term tariff.

Using resource to effectively re-target consumers with the opt-in scheme who were initially successfully prompted not long before will limit the number of consumers who can be prompted through the scheme for the first time. We may wish to prioritise prompting consumers who have not already been approached, so that the scheme helps remove the barriers to switching for as many consumers as possible. This may especially be the priority initially when the scheme is likely to be relatively smaller in scale and growing incrementally.

More generally, the design of the scheme will need to take account of changing data sharing technologies in price comparison and bill management, for example as Midata and Smart Data enabled services develop.[87]

[87] https://www.gov.uk/government/consultations/smart-data-putting-consumers-in-control-of-their-data-and-enabling-innovation

17. **Do you agree that participating consumers should not be followed-up outside of the scheme? Do you think that the framework for the scheme should include the Delivery Body following-up and re-prompting consumers who previously switched through the scheme?**

18. **If the Delivery Body were to re-prompt such consumers, how do you think this should be designed?**

19. **How do you think the opt-in switching scheme could link up with Midata or Smart Data more generally?**

20. **Do you have comments on how wider information law requirements should be considering in the design of the opt-in switching scheme?**

2.8. Assisting the UK's 2050 net-zero target

The primary focus of the opt-in scheme will be to remove the barriers to market information and engagement for consumers who are currently disengaged with the retail market. However, the Government and Ofgem have broader aims, particularly the UK's 2050 net-zero target, which we also intend for the scheme to help facilitate. We have set out a few ways that the scheme could be designed to support this, including, how we select what is prompted to consumers (see section 2.6.3 and Annex C.1) and how energy suppliers are targeted in the batching for the scheme (section 2.3.6).

Through encouraging consumer engagement with the market and energy, which will likely be necessary for uptake of decarbonising services and products, opt-in switching could also assist reaching the UK's 2050 net-zero target. As the scheme is developed, we plan to further consider how its design may be able to directly help assist reaching our net-zero target, but we would be interested to hear any ideas from stakeholders.

21. **How might the opt-in scheme be designed to help facilitate reaching the UK's 2050 net-zero target?**

3. Testing opt-out switching

For the reasons set out in section 1.4.3, the Government intends to test opt-out switching as part of considering how default arrangements might be reformed to enable greater competition. Annex E, provides a summary of the existing default arrangements for reference.

3.1. Aims of testing

We think that any reforms to default arrangements to facilitate competition between suppliers for consumers who are disengaged in the market (not making express choices), would likely require switches to be possible without express consumer consent, with an opt-out choice instead. Therefore, our first step is to test if moving consumers, with an opt-out, to a cheaper contract with an alternative supplier could work well for consumers.

Before the intervention is trialled with consumers, it will be important to undertake further qualitative research (section 3.7.1 describes some research we undertook in 2019) to understand how consumers might respond to this type of intervention. Learning from the Supplier of Last Resort (SoLR) process, where consumers are already switched supplier without their active consent, will also be important. This will help enable us to design appropriate protections into the testing of the intervention.

Only actual testing will enable us to learn and observe how consumers would experience this process rather than how they tell us they would in a hypothetical scenario. Testing will allow us to limit consumer risk by using select small samples in a relatively controlled and monitored environment with protections in place, before we decide whether to build to broader and more complex consumer segments as we learn and are confident that appropriate safeguards are in place.

This testing will also help understand the extent to which consumers who have remained on more expensive default tariffs have done so because they prefer these arrangements.

The levels of opt-out (and switch backs) will provide an indication of the proportion of people who are happy to remain on more expensive default tariffs even where limited individual effort is required to switch to a cheaper option, which will help assess the case for wider intervention in relation to default arrangements.

Testing will therefore seek to answer the following policy questions:

- Do consumers who are moved onto a cheaper tariff without their express consent prefer this intervention (with the opt-out offer) to the current framework where they would remain on a more expensive default tariff unless they proactively switch?
- What proportion of consumers would prefer to remain on their existing default tariff rather than switching to a cheaper tariff with an alternative supplier?

- How effectively will consumers understand what is happening/has happened?
- Will consumers engage with the opt-out choice?
- How will consumers who do not engage with the process and later discover they have been switched respond?
- Is the consumer experience different for different consumer segments? If so, are different approaches desirable for different segments?
- Could there be differential impacts on different groups, including those with protected characteristics, which might lead to distributional impacts for full-scale reforms? Are there any design options or safeguards that could make the process more desirable from a distributional perspective?
- How can we make the scheme as simple to navigate as possible, enabling consumers to reach their desired outcome, especially to ensure that consumers who don't want to switch supplier remain with their existing one?
- How do consumers respond to communications from a new supplier following the switch? How can we maximise understanding and co-operation?
- Can a non-consumer-directed switch process work?
- Can a scheme be designed that can accommodate all payment types and consumer segments?
- How can consumers easily switch back to their previous supplier should they wish?
- Can the scheme handle customers in credit or debt, with minimal disruption or administration?

Most of our aims focus on the consumer experience, so a key part of testing design and development will be looking at how we can measure consumer outcomes and answer our testing aims and questions. This is likely to require significant quantitative and qualitative consumer outcomes analysis, for instance, with the use of consumer interviews and surveys.

If default arrangements were reformed so that consumers did not automatically remain with the same supplier until they proactively choose to switch, given the potential scale of consumer switching this would generate, there could be significant disruption to the energy retail market.

We do not want to create unnecessary disruption to the energy supply market through this testing. The focus is on understanding whether the process (the movement to a different supplier without express consent) of such reforms could deliver better outcomes for consumers, with the assumption that, should this be introduced, the competitive process would produce cheaper tariffs than the average default tariff these consumers are on.

We therefore do not think that this testing should be focused on seeking to understand how suppliers might react to the opportunity to acquire new customers through this type of process, or the impact of full-scale reform on the supply market. However, both considerations would require significant attention before any wider roll-out of default arrangement reforms.

22. Do you think that we have identified appropriate testing aims? Please specify if there are areas you do not think we should focus on or if there is anything you think we should also include or take into consideration?

3.2. Roles and framework

The Government plans to set the high-level framework of the opt-out switching testing and introduce the primary legislation necessary to do this, which is the focus of this consultation. However, it is also necessary to consider some design questions at this stage, which will be finalised later, to make sure that the framework is appropriate. We have developed this consultation in consultation with Ofgem, though decisions around roles are to be determined.

To implement the testing there are various operational functions that a body will need to deliver. Separate from this consultation, we are considering what type of body should play which function. For the purposes of this consultation, we will refer to the body or bodies that implement the operational functions as the Delivery Body. This Delivery Body for the opt-out testing is distinct from the opt-in switching scheme Delivery Body. There are some functions that we think the incumbent or winning supplier could perform rather than the Delivery Body, such as communication with participating consumers, which we visit later in the consultation.

It is likely that the Delivery Body will be the point of contact for consumer queries, the body engaging with consumers to develop analytical data (for instance, by contacting consumers to ask them survey or interview questions), and the intermediary between the incumbent and winning supplier to activate switches on behalf of the consumer[88]. The Delivery Body will work closely with the policy leads (the Government and/or Ofgem), with some functions potentially shared. To assist stakeholders visualise how the testing scheme may work, Figure 2 below provides a graphical example.

The steps in Figure 2 are:

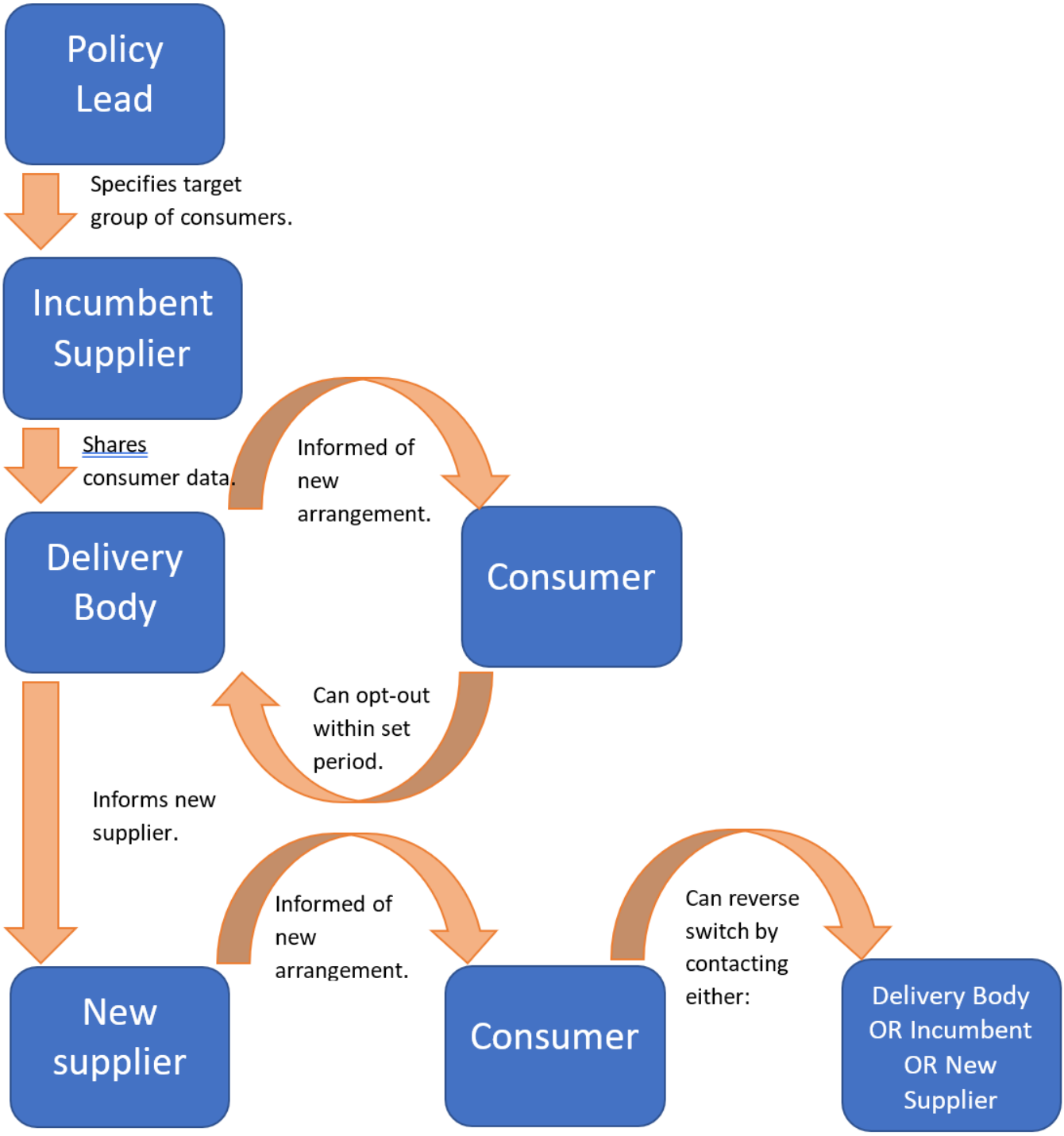
- Delivery Body request that target incumbent suppliers (see section 3.3.3) nominate target consumers (section 3.3.1) for participation and share their data.
- Incumbent supplier contacts customer informing them that their data will be shared unless they opt-out. Customer can opt-out of the scheme (Annex F)[89].
- Incumbent suppliers determine participating customers and inform Delivery Body, sharing relevant consumer data (section 3.8).
- Delivery Body and/or policy leads determine consumer's new arrangement (section 3.4), and inform consumer with opt-out option (section 3.5.1). Some consumers opt-out within set period before new contract is activated (process ends for those consumers).

[88] Given these are operational and research functions, it is possible that one body will not be suitably qualified for all these functions, and two distinct roles may therefore be created.

[89] As set out in Annex F, for the avoidance of doubt, we are not proposing to rely on a customer's failure to opt-out as evidence of consent to disclosure of their personal data. Rather, we anticipate suppliers will be legally obliged to share information for the purposes of the scheme, with the initial opt-out providing an opportunity to prevent this from occurring.

- After set period, Delivery Body informs winning suppliers of customers they can create a new contract with (section 3.8.2).
- Switch complete, consumer informed by winning supplier and/or Delivery Body (section 3.8.2).
- Consumer can reverse switch by contacting the Delivery Body, losing or winning supplier (section 3.5.2 and 3.8.3).

Figure 2: Example framework for delivery of opt-out switching testing



3.3. Targeting

3.3.1. Which consumers?

Given the aims set out in section 3.1 around minimising unnecessary disruption and wishing to focus on the consumer experience, we intend for consumer testing to be small in scale, likely in the 1000s of consumers.

Before testing begins, there will need to be research to feed into designing the testing to help minimise potential concern from or risk to consumers. As with Ofgem's Collective Switch trials, testing should first focus on consumers who are likely to be at the lowest risk of experiencing adverse outcomes, for instance, (potentially only initially) excluding those on the PSR and WHD eligible customers.

A Test and Learn approach may then be followed. As, and depending how, testing develops, these "more complex" consumers could become the focus, so that we can specifically understand how these types of consumers would experience default arrangement reforms. However, testing will need to progress carefully and learn from previous rounds. Testing would therefore likely take the form of a few rounds, with each round potentially including different treatment groups, to test different approaches.

The duration of testing will depend on the number of rounds and required preparation between them. However, we estimate that the testing could take up to two years.

As the tested measure is aimed at addressing the factors that have caused a loyalty penalty, the scope of tariff types targeted could be the same as the opt-in switching scheme (see proposal in section 2.3.1)[90], as these are the consumers who we identify as being most at risk of a loyalty penalty.

However, the aims of testing relate to the consumer experience, so covering all of these tariff types may not be necessary. We are also considering whether the opt-in scheme should focus or prioritise targeting consumers who have been on a default tariff for a longer duration. There may be some value in testing whether the consumer response to an opt-out switch is different depending on how long the consumer has been on a default tariff.

We propose that the framework should allow testing to be targeted at all default tariff consumers (including those who initially actively chose to be on a SVT), as they are all at risk of a loyalty penalty and there may be merit in understanding the consumer experience across consumer segments. But in the design phase there should be consideration about whether testing should only focus on a subset within this scope.

[90] tariffs that the consumer has not actively consented to be on and tariffs that have an auto renewal nature, i.e. including standard variable tariffs that consumers have actively switched onto

The opt-in switching scheme and opt-out testing are likely to be run at a similar (or the same) time, both led by the Government and/or Ofgem, and may be targeted, depending on final design decisions, at the same group of consumers. So, the design and targeting of these policies should be made with consideration to each other. For instance, the opt-out testing could be targeted at consumers who have already been approached by the opt-in scheme but who did not switch. This is a potential way that the opt-in scheme could work alongside any future default arrangement reforms with opt-out switching, so may be worth testing.

23. Do you agree with our proposed approach to targeting? Are there any particular segments you think the testing should focus on or exclude?

3.3.2. Prepayment meter (PPM) consumers

The PPM market has limited competition and switching, and very few suppliers offer fixed term tariffs. Many suppliers only offer evergreen tariffs (there is no fixed term on the contract), and often only one of these. Suppliers are not price discriminating between their customers to anywhere near the same extent as the non-PPM sector. However, this does not indicate that there is no loyalty penalty.

For non-PPM tariffs, there is competition in the fixed-term market where consumers are engaging with the market. Where competition is limited, for default tariff consumers, there is a loyalty penalty. In PPM market, more than 90% of customers are on default tariffs, compared to only 60% for all other domestic consumers, according to Ofgem's 2020 RFI data[91]. The PPM market, therefore, has significantly lower levels of competition, and the vast majority are paying more, a loyalty penalty, than they would be in a competitive market.

We expect that the introduction of smart PPM and the opt-in switching scheme should facilitate greater competition in the PPM market, which may lead to cheaper introductory offers for consumers engaged with the market and more distinctive price discrimination in the market. Default arrangement reforms with a form of opt-out switching may be useful in creating competition for default consumers who do not engage with the market, resulting in lower prices.

However, whilst there is so little competition, testing may not be able to produce significant savings for any targeted PPM consumers. As discussed in section 3.4, a winning tariff would either need to be selected through a competitive process (with only small consumer numbers unlikely to incentivise bids much cheaper than the open market) or through selecting a tariff already available on the market. Unless the market significantly changes in the next few years, neither route is likely to result in a significant saving relative to the consumers default tariff.

If the testing is not able to offer a significant saving it will not be able to test the measure very effectively. Therefore, targeting PPM customers may not be a useful focus for testing.

As set out in the payments section (3.6.3), there are also practical challenges with running an opt-out scheme for PPM consumers, due to the actions required by the consumer. We propose

[91] Ofgem, All supplier RFI data.

that PPM consumers be within the testing framework's scope, with their inclusion being subject to consideration closer to implementation if savings look possible.

24. Do you agree with our assessment of the PPM market and proposed approach of keeping PPM within the testing framework's scope, and assessing closer to implementation whether PPM consumers should be targeted?

3.3.3. Which suppliers?

Given the small scale of testing, targeting all suppliers would likely increase the difficultly, time and cost of implementing the testing. We do not think that covering all, or even a high proportion of, suppliers would add anything to the value of testing, as we do not expect that the consumer experience of the testing will be significantly different depending on their incumbent supplier. However, choosing a limited number of suppliers would require careful consideration.

Ofgem also considered only targeting select suppliers for their consumer retail market engagement testing, consulting and concluding in Jan 2017[92]. They decided that selection would be based upon whether the supplier has enough of the types of customer of relevance to the specific research question(s) and; whether the burden of the trial is proportionate to the particular supplier, taking into account the supplier's existing capabilities including consideration of the supplier's efforts to participate in previous Ofgem-led trials or undertake its own testing to address the specific area identified in the research question(s).

The opt-out testing will involve smaller numbers (likely 1000s) than the Ofgem trials, which in total included over a million, but we think these criteria for selection are broadly appropriate. We therefore propose to take into consideration the same criteria for selecting a limited number of suppliers.

25. Do you agree that the testing should target a subset of suppliers? If so, on what basis should those suppliers be selected?

3.4. Determining the new tariff and supplier

If reforms were taken forward following testing, determining the new tariff that a consumer will be switched to will require careful design as the process will have significant market impacts and the designed process will be selecting new tariffs for many consumers.

For testing, the market impact should not be significant, but we will still be designing a process that selects a tariff deemed superior to the existing default tariff that the consumer is currently on. The legislation would enable the Delivery Body to initiate a transfer to another supplier on the consumer's behalf.

[92] https://www.ofgem.gov.uk/publications-and-updates/decision-selection-criteria-mandatory-supplier-testing-measures-promote-domestic-consumer-engagement

A competitive process to determine this tariff would allow suppliers a fair chance to compete to offer the best deal for the target consumers. A competitive process is likely to be used for any future full-scale scheme. However, with small consumer numbers for the testing, we may not be able to get significant supplier interest in bidding for such customers. This could limit the extent of the saving such a process could offer consumers.

It may be possible to include requirements for the competitive process to ensure that the consumer is offered a certain level of saving, for instance, capping the bidding price. However, this could limit supplier bidding. Given the opt-in scheme is likely to be introduced at the same time as opt-out testing, if the opt-in scheme prompts consumers to a tariff selected through a competitive process then that winning tariff could also be used for participants in the opt-out testing.

An alternative approach would be to establish a set of criteria for selecting a tariff already available on the open market. Subject to the opt-out choice, the Delivery Body would then approach the supplier on behalf of the consumer to initiate the switch.

The set of criteria would need to be developed carefully, so that open market tariffs could be narrowed down with consideration a) to what is deemed a good offer to the average consumer targeted by the testing and b) the aims of the testing. For instance, it would be useful to understand how consumers respond to being switched to different types (e.g. size) of suppliers, so ensuring there is movement to a range of suppliers could be a useful to the aims of the testing.

The Supplier of Last Resort (SoLR) process is already an active example of a process where consumers are moved onto a different tariff and supplier through a competitive process where the regulator determines the most appropriate option based on a set of criteria. However, some of the criteria would likely be different for this testing scheme. For instance, the SoLR process takes into consideration the levy cost that prospective suppliers offer to be the designated SoLR.

One potential issue with selecting a tariff from the open market would be that (as discussed in section 3.5.1) when consumers are informed of what tariff they will be switched to, unless they opt-out, they will have an opt-out offer period. We will need to make sure that the offer selected is still available at the end of this period, which may require engaging with the supplier to get this assurance.

We are currently unsure if a competitive process for such small customer numbers could be successful at producing a good tariff outcome for consumers in the test, and would like to hear stakeholder’s views on this. If this remains unclear, we could enable for either approach to be taken, with the decision taken once the testing scheme is developed further, or with both methods used in testing.

As discussed for the opt-in scheme (section 2.3.2), a target tariff could be chosen based on variables other than price. As with the opt-in scheme, non-price variables are more difficult to objectively measure and including multiple variables would create added complexity. We are

also testing a measure seeking to address the factors that have caused a loyalty penalty, which is primarily an issue of price.

For the opt-in scheme in this consultation, we said that there may be merit in having minimum standards on non-price variables, but not for them to be a factor in tariff comparison. However, we proposed that the framework for the scheme should allow flexibility to potentially enable non-price variables to play a determining role. Unlike the opt-in scheme, opt-out will only be a few rounds of testing (section 3.3.1); there is less of a need to enable for future flexibility for an evolving scheme adapting to the market.

In the opt-in switching section of this consultation (Annex C) we set out potential options where the incumbent supplier could attempt to win-back the consumer. We do not think that such options should be included as part of the opt-out testing as the testing aims are on the consumer experience of an opt-out scheme and supplier impact, due to the small sample sizes, is expected to be minimal.

26. Do you think that a competitive process is likely to be effective at producing a good saving for consumers in the testing scheme? Would a process where the Delivery Body selects tariffs from open market using a set of criteria be more appropriate? Are there any other approaches we should consider?

27. Do you agree that tariffs should not be compared on variables other than price for testing, but there should be some minimum standards for non-price variables such as customer service? If yes, which variables should be included and how should they be measured/what should be the minimum standard?

3.5. The opt-out process

3.5.1. How the consumer can opt out

Once the new tariff and supplier has been determined, participating consumers will need to be contacted and informed of the new cheaper tariff that they will be switched to by a certain date unless they opt out of that action. To safeguard consumer choice, the communication will need to be as simple and clear as possible.

Before any testing begins, we intend to develop some qualitative research to consider how best to design this communication. We have some insights already from recent Ofgem trials. For instance, the qualitative research from the opt-in Collective Switch trials showed that consumers often didn't act until they received a second letter. Multiple reminders should therefore be included in communication design. The data sharing section (3.8) goes into more detail on who could communicate with participating consumers and the data sharing that is proposed for each option.

As the testing develops, understanding how and if consumers engage with the opt-out, and how the communication can be improved, will be a key testing aim, as set out in section 3.1. Therefore, participant surveys and interviews alongside testing will be required.

The communication will need to set a deadline to allow for the consumer to opt out. This will need to allow time for the consumer to respond, but not so long that the market conditions could significantly change since the selection of the winning tariff. A long period may lead to more conservative bidding in any competitive process, as suppliers are exposed to greater uncertainty. If the tariff is not selected through a competitive process with bidding suppliers, then the design of the testing will need to consider how a tariff can be selected, communicated to the consumer with the opt-out, and then still be available at the end of the opt-out offer period. As section 3.4 points out, this may require setting up an agreement with the winning supplier to ensure the selected tariff is available at the end of this period.

We will also need to determine how consumers can opt out. The simplest method may be for the consumer to simply respond to the communication indicating they would like to opt out. This would result in such consumers continuing to pay (generally) a higher price than the average non-default tariff customer, but this would be evidence of (limited) market engagement and active loyalty to their existing supplier. We think that limiting the testing to this simple opt-out should be the initial, and potentially only, focus before deciding to test any more complex options.

A further step that could be considered should initial testing prove positive, could be to require the consumer to switch from their default tariff, internally or externally, as the method of opting out.

This approach would likely be more effective at addressing the factors that have caused a loyalty penalty and bringing greater competition, as suppliers would not be able to continue charging consumers on default tariffs excessively. This type of opt-out could be built into future reforms to the default arrangements by requiring contracts to only last until an opt-out trigger is activated.

Full scale reforms of this kind could also enable suppliers to have specialised focuses, without having to invest in wholesale hedging or service appropriate for customers on default-type tariffs. Instead, they could focus on serving active customers with a preference for specialised products (e.g. dynamic pricing, EV charging or demand side response), with consumers who do not opt-out from the tariff chosen in a competitive process defaulting to a more standard supplier following the end of the fixed term.

With this approach consumers would also be required to take a more active choice to avoid the tariff selected by the competitive process. To avoid the opt-out switch, they would not be able to choose to stay in their default tariff arrangement, instead they’d need to expressly select a tariff from the market.

Requiring this more active engagement may be more difficult for consumers with limited confidence or ability to engage with the energy retail market, and so could lead to fewer consumers opting out. As set out in the section 3.7, the design of the testing will also need to give consideration to consumer risks such as potential anxiety caused by an opt-out choice. One of our aims is also how can we make the scheme as simple to navigate as possible, enabling consumers to reach their desired outcome, especially to ensure that consumers who

don't want to switch supplier remain with their existing one. Requiring a consumer to switch tariff to opt out may set us back on this aim.

Because this is a more complex opt-out option with a greater requirement on the consumer we propose that this option should be on the table for testing, but, if tested at all, it should only be tested in the final round(s), after considering the learnings and development from the first rounds. Testing will be looking to understand the consumer experience of different approaches using small samples in a relatively controlled and easily monitored environment; it may be useful to understand the appropriateness of this option before it is considered as part of any future default arrangement reforms.

If testing was to allow consumers to opt out simply by saying they'd like to opt out of the arranged switch and stay on their current default tariff, it should also accept a switch from the default tariff as an alternative opt-out method. Otherwise, the scheme would be moving someone from a tariff they had recently actively chosen.

To ensure this outcome, the Delivery Body would need to be informed that a target consumer has switched from their default tariff. This is something the design of the scheme will need to consider, for instance, requiring the existing supplier to inform the Delivery Body when a target consumer has initiated a switch.

3.5.2. Reverse switching

Given that some consumers are likely to be switched to a new supplier without having engaged with the communication informing them of what will be happening, the testing should allow consumers to easily switch back to their previous supplier should they wish to.

The communication options for how the consumer could request a reverse switch are considered in section 3.8.3.

Some protection for consumers already exists in the form of the 14-day statutory cooling off period that suppliers must provide. Currently switches tend to occur at around 21 days, so after the end of this cooling off period. If the consumer exercises their cooling off rights within the 14 days, then they remain with their existing supplier as they are yet to switch.

However, with the introduction of new systems and processes through Ofgem's Faster and More Reliable Switching Programme (currently planned to go-live in the summer of 2022), switches will occur faster and within that 14-day period. So, a consumer may already have switched when they decide to exercise their cooling off rights. Ofgem recently published their proposals for how suppliers will be required to meet their cooling-off period obligation in the context of faster switching[93].

These proposals, if introduced, would create three choices for the consumer if they cancel their new contract with a new supplier within the 14-day period after they have been switched. The

[93] https://www.ofgem.gov.uk/publications-and-updates/switching-programme-and-retail-code-consolidation-proposed-licence-modifications

proposed choices are: return to their old supplier on equivalent terms[94] to those they would have been on had they not moved (or on a different tariff), enter into a new contract with a different supplier; or stay with their current supplier by entering into a new contract with them. If they cancel after being switched and make no choice on a replacement, they will remain on their new tariff for a grace period of 15 working days, after which the new supplier can move them on to a deemed contract tariff.

The key policy question is whether further protections, beyond Ofgem's proposed supplier cooling off requirements, should be included in the testing design to enable the consumer to return to their previous supplier on equivalent terms.

A relatively simple additional protection, which we propose to include, would be to require the new tariff that the consumer is switched to have no exit fee. This will enable the consumer to switch back to their previous supplier (or an alternative) outside of the 14-day cooling off period without a fee. However, assuming the protections proposed by Ofgem are implemented, they might not be able to return to the previous supplier on equivalent terms if they cancel after the 14-day cooling off period during which these protections would apply.

As the target consumers who didn't opt-out will have been switched from a default tariff, which are not generally exclusive offerings, we believe that in many cases returning to the same or an equivalent tariff to their previous one will be possible, should that be their choice. However, there is a risk that some consumers may want to, but be unable to, return to the exact arrangements that they were on previously. For instance, some suppliers now credit check new customers and this may mean that a returning customer returns on worse terms, for instance, if they may only be offered a PPM tariff.

We are considering what protection may be possible to add to no exit fees and the cooling off period supplier requirements, to help enable consumers to be able to return to their previous arrangement with as minimal impact as possible. This might be bespoke supplier requirements for suppliers involved in the scheme. For instance, requiring the incumbent (old) supplier to offer returning consumers (through the opt-out testing) an equivalent arrangement on their return within a longer period than will apply generally.

The Erroneous Transfer Customer Charter[95] (contained in the MRA and SPAA industry codes) is a requirement for energy suppliers to enable consumers to quickly switch back to their previous supplier and tariff, when they have been incorrectly switched. Something similar could be considered for the purposes of the opt-out switching to achieve a reverse switch outcome.

Another option would be to create an induction period that would begin after the opt-out offer period when the consumer has failed to opt out. This option may link up well with one of the options discussed in the next section (3.6) on setting up Direct Debit payments with the new supplier. During this induction period, the consumer would remain on their default tariff, but the

[94] The proposal is that when the consumer has cancelled a contract with the new supplier during the 14 day cooling off period and wish to return to their previous supplier, the old supplier must offer the consumer an equivalent terms contract for a period of 16 working days following the switch to the new supplier.
[95] https://www.ofgem.gov.uk/publications-and-updates/erroneous-transfer-customer-charter#:~:text=The%20Erroneous%20Transfer%20Customer%20Charter,MRA%20and%20SPAA%20industry%20codes.

new supplier would start engaging with them to set up their payment arrangement. If the consumer does not engage with that communication from the new supplier, or changes their mind and decides they'd prefer to stay with their previous supplier, then a reversal is not required as they would never have left their arrangement.

However, using this approach would significantly limit the power of the intervention to address causes loyalty penalties - the continuation with the same supplier that the current default tariff arrangements provide - which these tested reforms are targeting.

There may be a risk that a consumer who was on the PSR does not return to the PSR when they return to their previous supplier. This same risk applies when a consumer switches to an energy supplier, this is why there are supplier requirements to assess PSR eligibility for new customers. Given the transient nature of people's circumstances, by instigating this assessment, switching can help ensure the appropriate households are on the PSR.

28. What methods could be used to help maximise consumer engagement with the opt-out option and communication?

29. What action should consumers be required to take to opt out of the arranged switch? Do you agree with our proposals in section 3.5.1?

30. How should the testing allow consumers to easily switch back to their previous supplier should they wish to? Would only restricting exit fees for the new tariff be sufficient? Should we consider any other options?

3.6. Setting up payment with a new supplier

Energy consumers generally pay through three different payment methods. Standard credit, where the consumer is invoiced for (sometimes predicted) usage over a set period, and they respond by making a payment. Direct Debit, where the consumer sets up an arrangement between the supplier and their bank to allow the supplier to transfer money from their account on agreed dates. And, prepayment, where consumers top-up their meter in advance of usage.

Generally, Direct Debit tariffs are cheaper as they involve less administration for suppliers and tend to result in fewer instances of debt, which is costly for suppliers to manage. Some consumers have a preference for a certain payment method, for instance, preferring to review and potentially challenge a bill based on (sometimes predicted) usage over the past quarter before paying.

Some consumers may find it difficult to avoid being on a pre-payment meter if they have a poor credit rating. Pre-payment is a preference for some as it can help the consumer to monitor and budget their usage and pay in customised instalments.

We would like to test opt-out switching for each of these payment methods to work out how opt-out switching might function as part of any future reforms, and to understand the consumer experience, for each type. As described below, a different approach may be required for each.

3.6.1. Standard credit consumers

A key design decision is how new payments will be established between the consumer and the new supplier. For credit consumers, we propose that the new supplier, following initial communication informing them of the switch, contacts the new customer with an invoice replacing the previous supplier.

It is likely that some consumers may not engage with the invoices from the new supplier. One use of testing will be to understand the extent to which this occurs and how communication could minimise this issue. The design of the processes set up (for all payment types) will also need to give consideration to consumer trust and fraud prevention.

If we determine that an induction period should be included as part of the design, for instance, to help enable reverse switching (see section 3.5.2), the switch could be prevented from activation until the consumer makes their final reconciliation payment with their previous supplier. At this point the incumbent supplier could give them the option to make the reconciliation payment to activate the switch, or not pay it within a certain time frame to prevent the switch.

3.6.2. Direct Debit consumers

For Direct Debit consumers, setting up a replacement payment arrangement may not be as simple. We are currently considering the following high-level options, which we go into in more detail below:

- A new Direct Debit is set up by the new supplier (potentially by the Delivery Body on behalf of the consumer) replacing the previous one.
- The new contract starts as a credit contract, the new supplier contacts the new customer informing them how to set up a Direct Debit.
- It may be possible to create a process where the consumer continues to pay the past supplier (potentially still on their default tariff) through an induction period until a new Direct Debit is set up.
- Direct debit customers are excluded from the testing.

An approach where the existing Direct Debit is stopped and a new one is set up with the new supplier (potentially by the Delivery Body), would be the smoothest. However, the existing Direct Debit framework has consumer consent as a key principle. Using this approach would be challenging to set up and a significant intervention in consumers' personal finances.

To avoid setting up a new Direct Debit on behalf of the consumer, the consumer could start off their new tariff as a credit payer, until they change to Direct Debit. There are generally greater costs to suppliers from billing credit customers, relative to Direct Debit customers, and greater risk of exposure to consumer debt, therefore the tariff price is generally higher.

Given this, any approach where the prospective customer will or may move from a Direct Debit payment to a credit one, may significantly limit the price saving the opt-out scheme could

produce. This risk could be something that testing can explore. However, if a competitive process for tariff selection is selected, the small scale testing may not be very instructive of how suppliers would bid in any, likely, much larger scale reforms.

With this approach there could even be two rates, a tariff rate the consumer receives whilst on credit, and the (likely cheaper) rate should they move onto Direct Debit. Or an obligation could be imposed on the winning supplier to charge the Direct Debit rate from the outset provided the consumers sets up a Direct Debit within an initial period, after which the standard credit rate would apply.

An approach that avoids these issues would be to establish an induction period until the consumer sets up a Direct Debit with the new supplier. It would need to be time limited so that it does not continue in perpetuity. During that period, the new supplier will seek to confirm payment arrangements to initiate the switch.

However, this would likely significantly weaken the power of the measure, as an opt-in is effectively required. It would likely look like an advanced version of the opt-in scheme, where the consumer only needs to take one action to initiate the proposed switch. It may be worth at least testing this approach, to see the consumer response levels. There may be things we can do to make the Direct Debit set up as easy as possible, such as having the details of their existing payment arrangements passed to the new supplier to enable a pre-populated Direct Debit authorisation with a pre-paid and addressed envelope.

Another variation of the induction period would be for the consumer to be switched with the Direct Debit continuing to go to the previous supplier at the new lower rate (of the new tariff), the previously supplier is then required to transfer the payment to the new supplier. However, this may be challenging to design and implement and confusing for consumers. Again, the induction period means that the consumer needs to make an opt-in action to finalise the switch, but they may be more likely to engage with the process if they already experience the saving and have already been switched for an induction period.

Another alternative is to exclude Direct Debit customers from the testing. Testing the measure on credit consumers may be sufficient evidence of the consumer experience for the Government to consider whether reforms on a wider scale are appropriate.

Given Direct Debit consumers make up 70% of default tariff market[96] and the testing aims include seeking to understand the consumer experience and whether the process can work for consumers across market segments, we would like to test Direct Debit approaches. We do not think that we should modify the Direct Debit framework for the purpose of testing. We therefore propose that that either the approach of the consumer being moved onto a standard credit tariff until they submit Direct Debit details is tested, or create an induction period, as detailed above, or both.

[96] Though, this is lower than fixed term (91%) and mixed term (82%) energy suppliers as per Ofgem's 2019 Consumer Survey results. (Table 631).

Any consideration of setting up a process of automatic Direct Debit change for any wider default arrangement reforms post testing, can be made with consideration to what is learnt from our testing. Especially, the outcomes and consumer experience from these alternative Direct Debit approaches and the relatively simpler standard credit proposed approach, which does not involve a change of payment type and (subject to reverse switch protection options) may not include an induction period.

3.6.3. Prepayment meter (PPM) consumers

Section 3.4.2 discussed whether the testing should target PPM consumers. There will likely be some practical challenges to overcome if they are. Whether a consumer is on a traditional or smart PPM, they will very likely need to receive updated information from their new supplier (e.g. receive a new 'top-up' card/token or download a new smartphone app) to complete any switch set up through the opt-out switching testing or any future default arrangement reforms.

There are some differences between the switching process for those on smart PPM compared to traditional. For example, when a traditional PPM consumer switches energy supplier, any remaining credit stays on the meter. The consumer can use this credit before needing to top-up and can continue topping up using their existing card/token, if necessary. When a smart PPM consumer switches energy supplier, any remaining credit left on the meter is set to zero. This requires the consumer to immediately top-up with the new supplier, with any previous credit balance refunded by their previous supplier.

Energy UK has developed the Smart Prepayment Switching Principles[97] to strengthen safeguards for smart meter prepayment customers when switching. Several energy suppliers have voluntarily signed up to the principles, taking responsibility to provide information and support to ensure that customers who have a smart PPM feel empowered throughout the switching process.[98]

The main risk we have identified when switching a smart PPM consumer through opt-out testing, is around consumers having to actively top-up their meter following the switch. This may present difficulties if the smart PPM consumer has not engaged with or understood the opt-out switch. A potential method to protect against this, would be to introduce an induction period where the switch is only activated when the consumer confirms they have understood that they will need to top-up with the new supplier.

We are interested in hearing stakeholder's views on these challenges and how they may be overcome.

31. Do you agree with our proposed approaches to setting up new payments with standard credit and Direct Debit customers?

[97] See: https://www.energy-uk.org.uk/our-work/retail/prepayment-meters.html

[98] The three principles are to: 1) Communicate clearly to customers, using appropriate channels, that any remaining credit on the meter will reset to zero on the day of switching. 2) Ensure that the customer has the information and/or vending device/top-up ID to enable top-up/vending on supply start date. 3) Support customers through appropriate actions which ensure they maintain supply throughout their switch, and take appropriate steps to safeguard them from financial detriment resulting from the switch.

32. Are there any other approaches or variations to the options outlined we should consider to help make the process as simply as possible for consumers?

33. What, if any, practical challenges do you see for opt-out switching for PPM consumers, and how might these be overcome?

3.7. Consumer protection

3.7.1. Consumers in vulnerable circumstances

One of the reasons the Government is particularly concerned with developing and testing measures to address the factors that have caused a loyalty penalty is because consumers on default tariffs continue to be more likely to be in demographic groups that face vulnerable circumstances. Since consumers from a lower-income household spend a larger proportion of their income on energy (8% for poorer households as opposed to 4% for average income households[99]), they are also disproportionately impacted by higher energy bills, compounding this concern.

However, we understand that opt-out switching, if not designed sensitively, could create new consumer risks for energy consumers, particularly those in vulnerable circumstances.

In 2019 Ofgem and the Government undertook some preliminary consumer surveys to help understand how consumers might respond to an opt-out based scheme[100]. For some, we found that the prospect of an opt-out switch could create anxiety, whilst for some others it removed the hassle of having to engage with the market.

These findings are one of the reasons why we think that small scale testing focused on the consumer experience are important before any larger scale intervention. As mentioned in section 3.1, before testing begins, we intend to develop some qualitative research to consider how best to design the testing to make the processes most suitable to all consumers. This will also be an opportunity to dig further into anxiety concerns and how these might be limited.

The design of testing will need to give consideration to the concerns our consumer surveys identified and wider consumer risks. As set out in our aims (section 3.1) the focus of testing is to understand whether opt-out switching should be part of any future default arrangement reforms, while limiting consumer risk by using small samples in a relatively controlled and easily monitored environment, before perhaps building to wider consumer segments as we learn and are confident that appropriate safeguards are in place.

As stated in section 3.3, testing should first focus on consumers who are likely to be at the lowest risk of experiencing adverse outcomes, for instance, excluding those on the PSR. However, our testing aims include understanding whether the consumer experience is different

[99] https://www.ofgem.gov.uk/publications-and-updates/state-energy-market-2019
[100] https://www.ofgem.gov.uk/system/files/docs/2019/10/pioneering_policy_making_-_web_version_updated.pdf

between consumer segments and whether different approaches may be desirable across them. Another aim is to understand the potential distributional impacts.

Therefore, once initial testing focused on the lowest risk consumers, a test and learn approach may then be followed. As, and depending how, testing develops, “more complex” consumers could become the focus, so that we can specifically understand how these types of consumers would experience default arrangement reforms. However, testing will need to progress carefully and learn from previous rounds.

53% of consumers who do not use the internet report that they have never switched, as opposed to 27% for those who frequently use the internet[101]. Testing design will need to give consideration to the digitally excluded. For instance, if consumers will be able to opt-out simply by saying so (and not having to switch to a new tariff), we propose that there should be a phone number that participants can call and postal return as opt-out methods. Ideally, consumers should also be able to reverse switch through these methods too.

Private and local authority tenants are also more likely than homeowners to have never switched, with 42% and 40% of private rented and local authority tenants reporting never having switched (48% and 40% in 2018), as opposed to only 24% for homeowners[102]. The design of the scheme will also need to consider how the testing may be more appropriately targeted at these consumers, who do not always have the same autonomy over their tariff arrangements as homeowners (likely one of the causes for lower switching and greater exposure to the loyalty penalty).

As discussed in section 3.5.2, with switching there is a risk that consumers who might be suitable for a supplier PSR are not identified. There are supplier requirements to assess PSR eligibility for new customers. As the opt-out testing may involve the Delivery Body acting on behalf of the consumer with limited communication between the supplier and the actual consumer during the switch, there is a risk that PSR assessments are missed. During the design it will be important to ensure that assessments are made by the new supplier.

3.7.2. Indebted consumers

As incumbent suppliers may block some switches on the basis that the consumer is in debt to them[103], debt is a barrier to switching. These consumers are also more likely to be on default tariffs and therefore more likely to be paying a loyalty penalty[104]. It is therefore especially important that we consider how our loyalty penalty measures can help support indebted consumers.

Consumers who are in debt may be on repayment plans with their incumbent supplier. The design of testing will also need to consider how and if such repayment plans may be transferred as part of the switch, for consumers who are in debt and have not been blocked.

[101] Ofgem, Consumer Survey 2019, Table 637.
[102] Ofgem, Consumer Survey 2019, Table 637.
[103] This is possible when the debt is more than 28 days old. PPM switches can not be blocked unless the debt exceeds £500, below this the debt can be transferred to the new supplier via the Debt Assignment Protocol.
[104] Ofgem, Consumer Survey 2019, Table 649.

The design of the scheme will also need to minimise any risk of consumers experiencing two energy bills at the same time. This can occur if the old energy supplier fails to issue their final bill in a timely manner, resulting in an overlap with the first bill of the new supplier, and can result in financial difficulties for consumers. Ofgem has recently introduced new Guaranteed Standards of Performance for Switching with the aim of improving incentives for suppliers to bill customers and refund credit balances promptly after a switch, and to compensate customers where this does not happen[105].

Section 5 asks for stakeholders' views on how we might be able to remove the barriers to switching for indebted consumers and help enable them to be targeted by the measures in this consultation.

3.7.3. Temporary loyalty penalty avoidance

Given that the testing (and potentially any default arrangement reforms) will switch default tariff customers to cheaper tariffs without requiring them to engage with the market, many who were not engaged may continue playing a passive role. We should therefore think carefully about the types of new tariff they could be moved onto. For instance, if it is a one-year fixed term deal, many consumers are likely to be automatically rolled back onto (usually more expensive) default tariffs after a year, which would not tackle the issues we are trying to resolve.

It is not clear how any default arrangement reforms, following the review of testing outcomes, may look. Consumers who do not engage in the market may be regularly moved onto a competitive tariff (with an opt-out option), for instance, after a given period of inactivity with market or when their fixed term tariff ends. Annex B explores this further.

It will be important to consider how any reforms could avoid only providing temporary loyalty penalty relief. However, the focus of this consultation is on how to set up testing the consumer experience of the opt-out choice, rather than how any future default reforms should look, which will be considered later and subject to testing findings.

34. Do you agree with the highlighted potential consumer risks that the scheme will need to consider? Do you think there are risks that we may have missed or other things to consider? Do you agree with our proposed approach to these risks? Are there other protections we should consider?

35. What types (for instance, by duration) of tariffs do you think participants in testing should be switched to?

3.8. Data processing and consumer communication

The consumer data we think that suppliers might need to be required to transfer (and to whom) and the ways this data may need to be used, will depend on many of the framework decisions

[105] https://www.ofgem.gov.uk/publications-and-updates/supplier-guaranteed-standards-performance-switching-second-phase-final-decision-and-statutory-instrument

we are consulting on in this document. The personal data transferred and used should be adequate, relevant, and limited to what is necessary for the administration of the scheme.

We anticipate the data related aspects of the scheme will require legislation and licence modifications to establish a new information sharing gateway and impose obligations in relation to the sharing and use of information for scheme purposes. The information we consider is likely to need to be shared for the purposes of the scheme and the ways this information may be used is discussed in more detail in this section.

We note that other information law requirements, such as data subject rights and restrictions on direct marketing, will also need to be factored into the design and implementation of the scheme. We have not focused on these requirements in this section as they are matters that will be addressed in subsequent implementation decisions under the framework we are consulting on. However, we would still welcome views on how wider information law requirements are relevant to the design of this framework.

In Annex F, we set out further proposals and questions on the opt-out testing data processing and consumer communication. This includes, how consumers should be selected for participation, the sharing of consumer characteristic data to enable analysis across consumer groups, and if there should be an initial opt-out to allow consumers an early opportunity to exit the testing before their data is shared with the Delivery Body.

3.8.1. Notifying the consumer of the forthcoming switch and opt-out option

Participant consumers will then be contacted, informing them of the tariff (including the predicted savings) they will be switched to unless they opt-out. As discussed in section 3.1, there will need to be careful design following qualitative research around how this communication should be designed. The consumer should be contacted multiple times to increase the chances of them engaging with the communication and testing and participant feedback will be important to help improve the messaging.

The communication will need to come from a trusted source that consumers will engage with. The Ofgem Collective Switch trials showed the switching rate was greatest by a significant margin[106] when the letter was fronted with the branding of the incumbent supplier (but still addressed from the Delivery Body), relative to Ofgem branding. In both cases the communication text highlighted that the communication was authorised by Ofgem. The Cheaper Market Offers Letter (CMOL) trial[107] also demonstrated greater switching rates when letters were sent from the incumbent supplier relative to Ofgem.

As these trials suggest, there may be greater engagement when the incumbent supplier's branding is present, whether the communication is sent by and addressed from that supplier or not. We therefore propose that testing should include this approach, potentially alongside alternatives to test effectiveness. Given the message will be informing the consumer of an intervention that the Government and/or Ofgem are planning to make if the consumer doesn't

[106] 26.9% switched when there was incumbent supplier branding, relative to 15% when Ofgem branding was exclusively used and 18.5% when the initial prompt came from Ofgem and the reminder came from the supplier.
[107] https://www.ofgem.gov.uk/publications-and-updates/results-cheaper-market-offers-letter-trial

opt-out, we think that the communication should also be very clear that the intervention is being made by the Government and/or Ofgem.

The actual administration of sending out the communication could be made by either the incumbent supplier or the Delivery Body. If the Delivery Body did this, we think that the following data (Table 2) will be required from the incumbent energy supplier:

Table 2: Proposed data that the Delivery Body would require from the incumbent supplier to administer opt-out communication with consumer.

Function	**Data required**
Contact the consumer.	Contact information
Make a price comparison between the existing tariff and what the testing is set to switch them to.	Information on existing tariff, including so that the Delivery Body can determine which prospective tariff the existing one should be compared to: • Standing charge • Unit rate • Payment type. • Meter type. • Online or offline customer. Annual consumption data will also be required so that a personalised comparison can be made based on usage.
Depending on whether the testing targets such consumers, a different approach to communication may be required for certain consumers, as those on WHD or with special communication needs. The Delivery Body will need to be able to identify these consumers to take that alternative approach.	• Whether they receive, or are eligible for, WHD. • Whether they have special communication needs. • Potentially other identifiers, such as whether the consumer is currently on the suppliers PSR. The latter could qualify as special category data for UK GDPR purposes.

If the incumbent supplier was required to take on this role, then this would minimise the consumer data that would need to be shared with the Delivery Body. The incumbent supplier would also already have communication systems in place with their customers, which would otherwise need to be set up for the Delivery Body.

For the incumbent supplier to send out the communication, the Delivery Body would likely need to inform them, by each segment, of the winning tariff. The incumbent supplier should be able to complete all of the functions in Table 2 with the winning tariff information shared from the Delivery Body and the customer data they already have access to. The Government and/or Ofgem and the Delivery Body would need to design the actual language of the communication and share templates with the target suppliers.

Although this approach could work, for testing, where oversight and monitoring is a priority to assess the customer experience and different approaches, we think that the Delivery Body should be in control of these functions with access to the necessary consumer data.

The opt-out communication will also need to include contact information for participating consumers to be able to ask questions about the process. We propose that the Delivery Body is the point of contact with an independent advisory role. It will also be useful for the Delivery Body, with the consumer's permission, to record the feedback and questions that come in from consumers as a method of understanding the consumer experience.

The Delivery Body is also likely to be more effective in this advisory role if it has access to the consumer's data set out in Table 2, which it will already have received from the incumbent supplier if it is also the body sending out the opt-out communication

The opt-out communication will also need to provide instructions of how the consumer can opt-out. Section 3.5 discusses different methods for how the consumer could opt-out. If, as we propose at least initially, the chosen route is for the consumer to opt-out by simply saying they'd like to opt-out then we propose that the Delivery Body be the point of contact, who can then inform the incumbent supplier and provide confirmation to the consumer.

If a target consumer switches on their own before they are switched through the testing scheme, then requirements will need to be set up for the incumbent supplier to inform the Delivery Body, so that they are not subsequently switched by the opt-out testing.

36. Do you agree that the opt-out communication should be administer by and addressed from the Delivery Body, but that also including the incumbent supplier's branding should be tested?

37. Should the Delivery Body administer the opt-out communication, do you agree with the proposed data fields in Table 2 that the Delivery Body would require from the incumbent supplier to administer the opt-out communication with the consumer? Are there other identifiers that we should consider to enable consumers with certain characteristics to be identified, with an alternative approach applied?

38. Do you agree the Delivery Body should be the point of contact for consumer questions? And that, with the consumer's permission, the Delivery Body should be able to record the feedback and questions that come in from consumers as a method of understanding the consumer experience.

3.8.2. Initiating the switch

Following the opt-out offer period, and subject to any induction periods (see sections 3.5.2 and 3.6), the Delivery Body will be authorised to initiate the switch on behalf of consumers who have not opt-ed out. To make this happen, we would like to rely on the existing switching process and procedures to the extent possible, but with the Delivery Body representing the consumer. The information required to facilitate the switch will need to be provided to the new supplier from either the Delivery Body (who, if they are communicating the opt-out choice, will already have access to certain data) and/or with an obligation on the incumbent supplier to share it.

Section 3.6.2 discusses options for how new payments will be set up for Direct Debit consumers, including enabling the new supplier to set up a replacement Direct Debit or for them to have the consumer's existing Direct Debit details to enable a simple one step authorisation from the consumer. To enable either option would require us to set up an obligation on the incumbent supplier to share the Direct Debit details with the new supplier.

39. Do you agree with our proposals on what data sharing process will be required to initiate the switch?

3.8.3. Reversing the switch

The communication informing the consumer that they are being switched, as they didn't opt-out, will need to provide instructions on how they can reserve the switch. The design could enable the consumer to request a reverse switch by contacting the new supplier, the previous supplier, the Delivery Body, or all three. The steps required and options available to reverse the switch or set up an alternative tariff arrangement, will be influenced by what reverse switch protections may be created for participants, discussed in section 3.5.2.

We propose that the Delivery Body should be the point of contact in communication to initiate a reverse switch and empowered to represent the consumer in this process, including by enacting their rights (subject to the protections in place) when engaging with the new and old supplier.

Consumers who have been switched through the testing who wish to be switched back may be confused about the protection available and steps they need to take. The Delivery Body will be able to advise the consumer of their options, and then ensure that the consumer's rights are met in the marketplace.

Consumers may also be irritated by the intervention and we would like to help ensure their desired outcome is reached as simply and quickly as possible. We think that providing the Delivery Body with the ability to represent the consumer in the marketplace for these purposes will help enable this outcome. This will also enable us to monitor this process and the outcome and experience of participating consumers.

To support the Delivery Body to effectively perform this function, it may be necessary for them to have access to certain consumer data. For instance, so that they are able to identify what

supplier the consumer was with previously, who they have been switched to and the details of the consumer's previous tariff arrangement, such as meter type and payment method. As discussed in this section (3.8), the Delivery Body will already have received this data from the incumbent energy supplier, but to perform this function, they may need to continue to store it for a period following the switch.

40. Do you agree that the Delivery Body should be the point of contact in communication to initiate a reverse switch and empowered to represent the consumer in this process, including by enacting their rights (subject to the protections in place) when engaging with the new and old supplier?

41. Do you have comments on how wider information law requirements should be considering in the design of the opt-out testing framework?

3.9. Potential other default arrangement reforms and testing to assist reaching the UK's 2050 net-zero target

As over half of consumers are on a default tariff, the default arrangements can have a powerful effect on the energy sector and consumers. Given we may develop reforms to the default arrangements, following testing opt-out switching, this is also a good time to start considering potential other reforms to them, which could be introduced alongside, to help support reaching the UK's 2050 net-zero target.

42. How could default arrangements be reformed to help facilitate reaching the UK's 2050 net-zero target?

4. Equality Considerations

As we are developing and designing opt-in and testing opt-out switching, it is important that we consider potential equality impacts. The Public Sector Equality Duty (PSED)[108] also requires the Government to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic[109] and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

Given that these measures are intended to facilitate greater competition in the energy retail market and address the factors that have caused excessive charging for consumers disengaged with the retail market, these measures should in general bring positive outcomes for impacted consumers, including those with protected characteristics. Consumers who already make active choices in the market will be able to continue to do so, enabling them to avoid excessive tariff charges.

Consumers with certain characteristics are more likely to be disengaged or on default tariffs than others, where this is the case the measures will likely have a greater impact for such consumer groupings relative to others. Ofgem's 2019 consumer survey shows the following groups are more likely to be disengaged with the retail market[110]: over 65s, consumers with a disability and those without children (relative to consumers below 65, without a disability and with children, respectively). Ofgem and Citizens Advice's Q3 2020 Consumer Perceptions of the Energy Market report found that only 27% of those aged 16-34 had ever switched supplier, in contrast to the 45% average[111].

Consumers who spend a greater proportion of their income on energy and/or are fuel poor will disproportionately benefit from measures that reduce their energy bills. Therefore, if consumers with certain characteristics are more likely to be fuel poor, such consumers in aggregate are likely to experience a greater benefit from such measures. England's 2020 Fuel Poverty statistics[112][113] indicate that younger, non-white and consumers with a disability are more likely (relative to other ages, without a disability and white, respectively) to be in fuel poverty.

[108] https://www.gov.uk/government/publications/public-sector-equality-duty
[109] The protected characteristics that should be considered are age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
[110] Ofgem's consumer survey defines disengaged customers as those who have not switched energy supplier or tariff, or compared tariffs offered by their energy supplier or with other energy suppliers within the past 12 months.
[111] https://www.ofgem.gov.uk/system/files/docs/2021/01/consumer_perceptions_of_the_energy_market_q3_2020.pdf
[112] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882281/fuel-poverty-detailed-tables-2020-2018-data.xlsx
[113] https://www.ethnicity-facts-figures.service.gov.uk/housing/housing-conditions/fuel-poverty/latest

We are continuing to develop our understanding of how these measures may impact consumers with different characteristics and would like to ask stakeholders to share any relevant evidence or insight for us to consider in relation to the framework and subsequent design decisions. Areas where we consider there are likely to be equalities considerations requiring further consideration as the schemes are developed include:

- Decisions in relation to targeting (see sections 2.3 and 3.3). For instance, who counts as disengaged with the market for the purposes of the measures, how PPM customers are approached by the measures and which consumers are first approached.
- For the opt-out testing, as set out in section 3.3, it is possible that the testing will exclude certain consumer groups (e.g. PPM consumers, those on the PSR and who receive WHD or people in debt) at least initially, which could result in people with particular characteristics being deprived of the benefit of the testing. For example, if the testing excludes consumers who receive WHD it may be less likely to target more elderly consumers.
- How the measures are designed to help enable it to effectively target consumers with certain characteristics (as discussed in sections 2.6.1 and 3.7.1), for instance, the digitally excluded and those with special communication needs. Decisions in relation to scheme processes and correspondence may also have implications (positive and negative) for accessibility and uptake by people with certain protected characteristics.
- How effectively these measures can support indebted consumers. Section 5 sets out the barriers that debt can create for switching, which may limit the extent to which these measures can remove the barriers to switching for some indebted consumers.

We also think opt-out switching has the potential for adverse consumer outcomes because of requirement for consumers to act to prevent the switch and the potential for consumers to be switched without having engaged with the process. As highlighted in section 3.7.1, the prospect of an opt-out switch could create anxiety for some consumers. Such outcomes may be more likely for consumers who, because of their circumstances (for instance certain disabilities), find it more difficult to engage with or understand the communication provided and the opt-out choice.

We are seeking to mitigate the risk of adverse outcomes by starting with small scale testing, after further research into these type of risks, and first targeting lowest risk consumers. As, and depending how, testing develops, “more complex” consumers could become the focus, so that we can specifically understand how these types of consumers would experience default arrangement reforms. However, testing will need to progress carefully and learn from previous rounds.

43. Do you have any evidence that may improve our understanding of how these measures may impact consumers with different characteristics? For instance, given that we propose for these measures to target disengaged consumers.

44. How could we design these measures to better:

a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;

b) advance equality of opportunity between people who share a protected characteristic and those who do not; and

c) foster good relations between people who share a protected characteristic and those who do not.

5. Debt as a barrier to switching

Incumbent suppliers may block some switches on the basis that the consumer is in debt to them. This is possible when the debt is more than 28 days old for standard credit and Direct Debit consumers. For PPM consumers, switches can not be blocked unless the debt exceeds £500 (per fuel), below this the debt can be transferred to the new supplier via the Debt Assignment Protocol.

While suppliers do not always exercise their ability to block switches by indebted customers, debt can be a hard barrier to switching for some customers, particularly where debts are larger[114]. As of the most recent Ofgem data, there are more than 1 million electricity customers (a useful proxy for households) in debt or arrears (of more than 90 days) to their energy supplier[115] .

These consumers are also more likely to be on default tariffs and therefore more likely to be paying a loyalty penalty[116]. It is therefore especially important that we consider how our loyalty penalty measures can help support indebted consumers.

Helping enable consumers to reduce their debt is likely to reduce their chances of being debt blocked and therefore enabling access to a wider choice of tariffs, and, often, to make a saving by switching supplier. This in turn enables for a more competitive market, which encourages suppliers to be more innovative and efficient.

However, whilst a consumer is in debt, blocks to switching supplier (though not tariff with the same supplier) could make it harder for them to reduce the cost of their tariff to help enable them to reduce their debt. If consumers could more easily switch whilst in debt, by either transferring the debt or continuing to owe the previous supplier, this may help indebted consumers to pay off their debt.

We would like for the opt-in switching scheme and opt-out testing to be able to target and support indebted consumers and are considering how to do this. However, with the existing framework around debt, the ability for these schemes to remove the barriers to switching for these consumers may be limited.

45. How could the barriers to switching be reduced for indebted consumers?

46. How could opt-in switching and opt-out testing be designed to effectively support indebted consumers?

[114] https://www.ofgem.gov.uk/system/files/docs/2016/07/decision_on_review_of_domestic_objections.pdf
[115] Ofgem, Data Portal, updated regularly.
[116] Ofgem, Consumer Survey 2019, Table 649.

Annexes

Annex A: Other policy options we considered

In our 2019 consultation we also set out other potential loyalty penalty measures[117]. This included: targeted interventions to certain sections of the market to limit price differences or cap prices, for example for consumers in vulnerable situations; regulators applying principles describing unfair pricing approaches with ex-post enforcement; and bolder enforcement of consumer law and sector specific rules to tackle harmful and exploitative supplier practices.

We have taken on board the views of stakeholders responding to the consultation and further considered these options.

Ofgem continue to work with BEIS on considering if and how its enforcement could be strengthened[118] and, as per the 2019 Manifesto, the Government is committed to give the Competition and Markets Authority enhanced powers to tackle consumer rip-offs and bad business practices. As set out in section 1.4.4, targeted price intervention for certain sections of the market may be something that Ofgem choose to consider following the end of the current price cap, as part of their section 9 obligation in the Domestic Gas and Electricity (Tariff Cap) Act 2018.

Respondents highlighted several issues with an ex-post pricing principles type approach. For instance, that it would be difficult to define what constitutes excessive charging, it creates uncertainty and compliance/regulatory risks for suppliers, and that the measure would not protect consumers from the initial harm of the loyalty penalty, due to their ex-post nature.

We concluded that there may be some merit in the flexibility of this option, but we were not sure there were many (if any) circumstances where flexibility to charge higher prices would be desirable that were not already allowed for under the price cap. We also felt, given the potential ambiguity around when the principles might be broken, that this policy would likely be difficult to enforce and would likely lead to legal disputes, which would limit the policy's ability to tackle the issue.

Some respondents to the last consultation supported long term continuation of the price cap as the method to tackling the loyalty penalty, with others expressing their concern with its continuation.

Some stakeholders also made the case for regulating what suppliers can charge default tariff consumers relative to acquisition consumers, which is sometimes called 'regulating price

[117] Section 5: https://www.gov.uk/government/consultations/flexible-and-responsive-energy-retail-markets
[118] The latest Ofgem enforcement guidelines are available here: https://www.ofgem.gov.uk/system/files/docs/2017/10/enforcement_guidelines_october_2017.pdf

differentials'[119]. We think that interventions of this kind, which seek to directly limit the extent to which suppliers can charge different prices between new and existing customers, are vulnerable to gaming by suppliers, who may find other ways of maintaining a significant premium for their existing customers. For instance, we have seen some suppliers offering credit to new customers.

As part of Ofgem's 2010-2013 Retail Market Review[120], Ofgem sought to prevent consumers from being locked into contracts with suppliers and paying a loyalty penalty. Changes included requiring the default tariff that consumers are rolled onto to be the cheapest evergreen tariff[121] they offered without a termination fee and requiring suppliers to roll consumers on no longer available evergreen tariffs to cheaper similar live ones when they are on offer to new customers. In 2017 Ofgem then allowed suppliers to also roll consumers onto fixed term tariffs without an exit fee, providing it is the same price or cheaper than the relevant cheapest evergreen tariff[122]. Despite these changes, suppliers have found other ways of charging a loyalty penalty, currently by making their evergreen tariffs more expensive than their acquisition fixed-term tariffs.

Our view is that lasting solutions to preventing excessive loyalty penalties involve tackling the leading causes: the passive loyalty created by indefinite tariff arrangements and the barriers to market information and engagement. Focusing on limiting the means through which suppliers have exploited these factors is unlikely to represent a sustainable solution.

We expect that regulating price differentials would likely lead to some suppliers increasing the price of their acquisition tariffs to be able to increase or maintain high default tariff rates and limit losses. Thus, allowing some suppliers to retreat to a business model focussed on gaining maximum profit from their default tariff customers. As price saving is the biggest driver of switching[123], price increases in the acquisition market would likely lead to falls in switching and therefore competition.

This measure would require intervention in the currently competitive fixed term tariff market, which we do not think we should do. We also think that Government should generally avoid limiting companies from determining their own pricing strategies. If a business wishes to make a loss to acquire customers, there is a limited case for Government intervening to restrict this behaviour.

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[119] The default arrangements already require suppliers to put customers on their cheapest evergreen tariff or fixed-term tariff that is the same price or cheaper, when an acquisition fixed-term tariff expires.
The Financial Conduct Authority (FCA) have recently proposed a measure where motor and home insurers would be required to charge the same price to an existing customer at renewal as would be charged for a new customer with the same risk profile if buying through the same sales channel. https://www.fca.org.uk/publications/market-studies/ms18-1-general-insurance-pricing-practices-market-study

[120] https://www.ofgem.gov.uk/publications-and-updates/retail-market-review-final-domestic-proposals

[121] Often referred to as Standard Variable Tariffs (SVTs): a tariff that is for a period of an indefinite length and which does not contain a fixed term period.

[122] https://www.ofgem.gov.uk/publications-and-updates/decision-default-tariffs-domestic-customers-end-fixed-term-contracts

[123] Ofgem's Consumer Perceptions survey (April 2020): https://www.ofgem.gov.uk/publications-and-updates/consumer-perceptions-energy-market-april-2020

We also do not think that this measure is well suited to the energy retail market. Given the different nature of fixed term and SVT contracts[124], suppliers generally adopt different hedging strategies for fixed term and SVT tariffs. Wholesale energy is generally procured on a shorter-term hedging strategy for fixed tariffs and they are therefore more responsive to wholesale cost changes. This makes it difficult to define a 'fair' differential, since we should expect the market differential between average SVT prices and fixed term tariffs to move over time; when costs are falling, the gap is likely to grow; when rising, it is likely to shrink. To limit price differentials would therefore risk disrupting the hedging strategies that suppliers currently use to minimise their costs.

As we concluded when deciding to introduce the price cap, we do not think regulating price differentials is the optimal approach to tackling the loyalty penalty, but we will continue to consider the above challenges. The opt-out testing may not support the case for including opt-out switching as part of reforms to the default arrangements, we may then revisit alternative options.

[124] A fixed rate contract gives the supplier more certainty that the customer will remain a customer for the duration of that contract, whereas the SVT customer could leave at any point. Suppliers also can limit the number of customers offered a particular fixed tariff to reduce their exposure to a specific customer group or wholesale procurement strategy.

Annex B: How any future default arrangement reforms might look

Any default arrangement reforms that involve incorporating an opt-out switching scheme could mean significant change to the energy retail market. Given the small scale of the testing we are planning (see section 3.1), testing will not be appropriate for assessing the likely responses of industry players or the market impact from including opt-out switching as part of any reforms. We will therefore consider separate methods to make these assessments as we consider if and how default arrangements should be reformed in the long term.

Our testing will focus on the consumer experience of being moved to a more affordable tariff and supplier, with the option to opt-out. If the conclusion of testing is that this could be an acceptable element of future reforms, there are many different ways that a competitive process could be established to replace indefinite tariff arrangements with the same supplier.

Consumers could only be entered into the auction after a certain duration on a default tariff, perhaps after they've already been approached by the opt-in scheme. Or, reforms could remove defaults tariffs altogether with all consumers being required to make an active choice at the end of their fixed term deal or being entered into an auction with suppliers competing to be their next supplier. In this case, the opt-out would be the consumer choosing a replacement fixed-term deal instead of rolling into the auction.

There are various ways auctions could work. You could use counting down clock auctions, where suppliers bid for the number of customers they could accept at a certain price and then consumers are switched across the winner(s). The bidding in an auction could be to determine a margin over basic underlying costs, such as wholesale, network and levies. The incumbent supplier could be allowed to price match the auction outcome to keep the customer. Or, auctions could determine the price that a supplier must accept to keep that batch of customers; consumers could then choose from the suppliers who were able to offer that price or be randomly allocated one of them. Given the importance of continuity of supply and our desire to address the factors that have caused the loyalty penalty, we would like to consider how default arrangements might be reformed to maintain continuity of supply without the need for consumer who are disengaged from the retail market to remain with the same supplier.

As mentioned in section 1.4.3, we think that reforming default arrangements so that there is competition between suppliers for consumers who are disengaged in the market (not making express choices), requires switches to be possible without express consumer consent, with an opt-out choice instead. However, we will continue to consider how else the default arrangements could be changed to achieve this outcome and address the factors that cause a loyalty penalty.

47. Are there other approaches that the Government should consider to the default arrangements that would facilitate greater competition between suppliers and lower prices for all energy consumers?

Annex C: Further proposals and questions on the opt-in switching scheme prompt and the competitive process

This annex follows on from section 2.4 and discusses some of our more detailed considerations for how the prompt and any competitive process may be designed for the opt-in switching scheme.

C.1. Comparing tariffs on non-price variables

When comparing and selecting the tariff offered to consumers, there may be merit in considering variables other than price, for instance, customer service. Given the scheme will involve selecting tariffs that will then be highlighted to energy consumers, it is worth considering whether this measure could also help meet other Government energy goals, especially achieving the UK's 2050 net-zero target.

Ofgem's Consumer Perceptions surveys[125] show that price continues to be the most important factor when choosing a supplier. But 19% also consider the suppliers reputation and whether they offer green energy (increasing from 9% in 2018), and 18% whether they have good customer service.

Including variables other than price, as part of any competitive comparison process to select a winning tariff, would require assessments and reliable measurements against these variables on a supplier by supplier and/or tariff by tariff basis. This may be difficult, especially relative to price, which is a more objective measurement. Including more than one variable, especially ones difficult to measure or compare, would also likely add significant complexity. The loyalty penalty is an issue of price so price should be the key determining factor, if any others were included.

Rather than include non-price variables as part of the competitive process, there could be a minimum standard or requirement for a tariff and/or supplier to enter the competitive process. This could be achieved through a prequalification process. This is explored further in section 2.6.3.

Overall, we think there is merit to further considering the use of non-price variables, in particular as a way to help the scheme facilitate reaching the UK's 2050 net-zero target. However, these variables may be more useful as entry requirements for a competitive process rather than a means of comparing tariffs within this process against one another.

48. If the consumer is prompted to a specific winning tariff, do you think that the scheme should consider variables other than price? If so, how?

C.2. Multiple winners

In the Ofgem Collective Switch trials, the Open Market approach highlighted the saving that would be available to the consumer if they switched to the cheapest tariff available to them (of

[125] https://www.ofgem.gov.uk/publications-and-updates/consumer-perceptions-energy-market-april-2020

the same type) on the PCW's platform. They were then directed to the PCW's services (phone and website) to consider market offers available. With this approach, the consumer is likely to encounter multiple market offerings for consideration.

In the trials, the Collective Switch approach produced one tariff winner that was prompted to consumers in that batch[126]. If this or a similar competitive process was adopted, offering more than one tariff option to the consumer, or a process where multiple suppliers can be winners, may be options to explore. We have identified three potential reasons for considering this.

Firstly, it may be in the consumer's interest to see multiple cheaper tariff options relative to their existing arrangement. For instance, from different market segments, e.g. by supplier size[127] or different levels of green credentials. Ofgem's Consumer Engagement Survey has found that a lack of trust in unfamiliar suppliers is a barrier identified by consumers[128]. However, Ofgem's CMOC trials[129], where consumers were prompted with three tariffs, were less successful at prompting a switch than the Collective Switch trials that only included one tariff. Though, it is unclear that the number of tariffs offered was the causal reason, but it may be possible that one tariff is more effective for its simplicity.

If only one tariff and supplier can win in any competitive process (for each segment[130]), then the consumer batch size will likely need to be limited with consideration to the predicted number of accepting consumers that a winning supplier could onboard. However, if the competitive process can produce multiple winners, then the batch size can be greater, and the scheme may be able to reach more consumers over a shorter period.

If an auction is used for the competitive process, one approach could involve suppliers bidding with a quantity of consumers they would be comfortable for the scheme to offer their bid to. This may also help ensure that small suppliers, who may be less able to accommodate many new customers quickly, are able to participate in large auctions. It could also reduce the risk of a small supplier bidding into an auction and receiving more switching requests from consumers than they can quickly accommodate.

If large auctions are used, there may be merit in capping the number of consumers a supplier could bid for, to manage potential supplier capacity issues. As part of Ofgem's Supplier Licensing Review[131], Ofgem have decided to assess whether suppliers have appropriate systems to take on more customers as they reach 50,000 and 200,000. These assessments may be useful to assess supplier auction entry. As discussed in section 2.3.5, auctions sizes

[126] Though, when the consumer contacted the PCW they were also informed of other offerings. In the first trial 44% went for the exclusive prompted tariff, this was 70% and 67% in the second and third trials. https://www.ofgem.gov.uk/system/files/docs/2019/09/collective_switch_slides_for_publication.pdf
[127] The Collective Switch trials were less successful at initiating a switch when the tariff prompted was from a small supplier than a large supplier, though it is not clear that the supplier size was the cause.
[128] See Ofgem's 2018 and 2020 Consumer Engagement surveys: https://www.ofgem.gov.uk/publications-and-updates/consumer-survey-2020-update-consumer-engagement-energy
https://www.ofgem.gov.uk/publications-and-updates/consumer-engagement-survey-2018
[129] https://www.ofgem.gov.uk/publications-and-updates/cheaper-market-offer-communication-trial
[130] In the Collective Switch trials separate auctions were held for direct debit online, direct debit offline, standard credit online and standard credit offline. Though, the full scheme will not necessarily repeat this approach.
[131] Pages 113-15: Decision on the Supplier Licensing Review: Ongoing requirements and exit arrangements Ofgem

will also need to be set with consideration to how many switches suppliers and the shared market infrastructure (e.g. the Consumer Switching Service) can handle at once.

If a competitive process did produce multiple winners, to enable greater scale and mitigate onboarding risks, the scheme could be designed so that only one of the winning offers is presented to the consumer. This may be the best option if presenting one option is found to be more effective, or as a means of limiting the number of consumers taking up an offer with a supplier that can only accommodate onboarding a limited number in a short period.

Thirdly, there may be advantages to allowing the incumbent supplier to also present a competing tariff option for their existing customer alongside the winner of a competitive process. This option is discussed in the next section (C.3).

49. If consumers are prompted with a particular tariff, do you think that there should be more than one?

50. Do you think that the competitive process, where used, should enable more than one winner? If so, why and how?

C.3. The incumbent supplier and 'win backs'

In the opt-in trials, suppliers were not allowed to try and 'win-back' customers by offering them a cheaper tariff (than their existing default tariff). Specifically, when the supplier received a loss notification (that the consumer has set up a switch with a rival supplier), they were prohibited from carrying out any win-back activity during the cooling off period; and during the trials, suppliers had to exclude participating customers from other tests, trials, marketing campaigns and could not offer them new deals when these customers got in touch with them. This was restricted because the trial's aims were to focus on how consumers would respond to the prompt.

However, the full scale scheme will not have these aims, so whether suppliers should be allowed to try and persuade the default customer to stay with them once they have been approached by the opt-in scheme is an open question. This could be designed into the scheme by, for instance, following the competitive process the Delivery Body could ask the incumbent supplier if and what they would like the communication to also offer from them alongside the rival winning tariff. There are potential advantages if incumbent suppliers can do this:

- Customers might be more willing to switch tariff internally than externally. Ofgem's 2018 Consumer Engagement Survey found that 42% of survey participants "worry that if I switch things will go wrong"[132]. However, in the CMOC trials the internal tariff arm (where consumers were informed of their existing supplier's cheapest tariff and a competitive alternative from an alternative supplier) did not significantly outperform the external tariff arm, which only showed a cheaper deal from an alternative supplier[133].

[132] See Ofgem's 2018 Consumer Engagement survey: https://www.ofgem.gov.uk/publications-and-updates/consumer-engagement-survey-2018
[133] https://www.ofgem.gov.uk/ofgem-publications/156464 (p.39)

- Generally, the administrative cost of onboarding new customers is greater than starting a new contract with an existing customer.
- Given that suppliers have the ability to block many switches when a consumer is in debt[134], allowing incumbent suppliers to offer a cheaper tariff to their existing consumers alongside the one produced through a competitive process, may, in some instances, be how we can enable this scheme to help mitigate a loyalty penalty for these consumers. Though, in the CMOC trials, including the supplier's own cheapest tariff made no statistically significant difference to the switching rate of customers in debt. Section 5, discusses debt as a barrier to switching further.
- Allowing this may encourage greater constructive engagement from incumbent suppliers.

However, there may also be disadvantages:

- If the incumbent supplier can make an offer alongside the winning tariff in the competitive process, this devalues the incentive to other suppliers from bidding into the competitive process, as their tariff will not be the exclusive offer in the communication. To encourage competition and produce an offer with an attractive saving (to maximise market engagement), the scheme will need to act as a valuable opportunity for suppliers to acquire new customers and incentivise participation and competitive bid.
- The main aim of the scheme is to remove barriers to market information and engagement for consumers to engage with the market, as a means of addressing the factors that have caused a loyalty penalty. An approach that highlights an alternative and the existing supplier's cheaper option, may be less effective at encouraging the consumer to engage with the market then or in the future, relative to highlighting the potential gains from considering offers available with alternative suppliers in the market.
- If the incumbent supplier is able to bid with a tariff in the competitive process to be the winning tariff offered to their existing customers, then they will have an opportunity at this point to be the tariff the scheme prompts consumers to.
- Allowing the supplier to make a competing offer alongside the winner would give them a 'second bite of the cherry', which other suppliers will not have for that consumer.

Outside of the scheme, suppliers can market new offerings to their existing customers, subject to data protection requirements. Therefore, they will continue to have this method of incentivising customers to move from default tariffs onto non-default tariffs, which would also prevent such customers from being targeted by the opt-in switching scheme.

51. Do you think that the opt-in switching scheme should seek to enable incumbent suppliers to try and keep their existing customers alongside the opt-in prompt?

[134] This is possible when the debt is more than 28 days old. PPM switches can not be blocked unless the debt exceeds £500, below this the debt can be transferred to the new supplier via the Debt Assignment Protocol.

Annex D: Further proposals and questions on the opt-in switching scheme data processing and consumer communication

This annex follows on from section 2.7 and sets out our thinking on how target consumers could be selected for the opt-in switching scheme and whether an initial opt-out should be included for consumers.

D.1. Batch selection process

As set out in section 2.3.5, the scheme would likely operate in batches. We propose that, when a batch is being set up, suppliers be required to choose customers that meet the chosen target criteria (see section 2.3).

To do this they could be required to randomly pick from their pool of customers meeting the target criteria. Ofgem's opt-in trials required suppliers to provide aggregate data on how customer samples compared with the total eligible population in terms of their energy consumption, length of time on SVT and region. This approach allowed Ofgem to check that the sample was representative so that the results could be generalised, but this requirement could also help mitigate against the risk of supplier's cherry picking which customers they entered into the scheme.

We think there may be some risk of suppliers submitting consumers most expensive to service, or who they think are least likely to engage with the prompt, or consumers they already expect to switch, or who are more likely to, without a prompt.

If the scheme scales up to approach large numbers per year this may also limit any cherry picking, as the pool of eligible target consumers would reduce over time, provided that incumbent suppliers do not pick the same customers for every batch, which may require some prevention. Though, the target pool will also refresh as some consumers re-join default tariffs and come within the targeting scope, depending on what that is.

The risk of cherry picking is likely to be influenced by how the Government and/or Ofgem choose to target consumers. For instance, if they choose to prioritise people who have been on a default or standard variable tariff the longest then this would be the instruction to suppliers and this should help prevent some cherry picking.

If the scheme requires suppliers to pick, then we think there is a risk of cherry picking and randomisation requirements will need to be checked. We therefore think this approach would need to be coupled with a supplier requirement to share aggregate data (with the Government, Ofgem or the Delivery Body, whoever would perform the check) on the consumers selected with a breakdown by consumer characteristics, which could then be compared against the total eligible population. This would only be effective if the characteristics chosen enabled any cherry picking to be identified.

A more robust alternative is for a monitoring body (potentially the Delivery Body or the Government/Ofgem) to randomly pick customers from a supplier's pool of customers meeting the target criteria, which may require them to have access to a data on a larger number of consumers than would be required if the supplier selected. However, it may be possible for the supplier to allocate a unique identifier to each consumer, enabling the monitoring body to select consumers without being able to identify individuals and minimise personal data processing.

52. Do you think that cherry picking is a plausible risk and, if yes, how should processes be designed to mitigate against it? Please provide your view on the two options raised: requiring suppliers to select with the Government/Ofgem/Delivery Body reviewing aggregated data to check for representativeness; or the Government/Ofgem/Delivery Body randomly selecting from the pool of eligible customers for each supplier? Are there other methods we should consider?

53. If the Government/Ofgem/Delivery Body were to review aggregated data to check for representativeness, what data do you think would need to be processed to enable this check?

D.2. Initial opt-out and prompt determination

Once the batch of consumers has been selected, we propose that, should the scheme require the supplier to share personal data with the Delivery Body (see section 2.7.1), the incumbent supplier could then be required to contact each selected customer informing them of the scheme and offering them the ability to opt-out from having their data shared for the scheme's purposes.

The purpose of the initial opt-out would be to provide customers who do not want to be involved in the switching process an early opportunity to exit the scheme before their data is shared with the Delivery Body. For the avoidance of doubt, we are not proposing to rely on a customer's failure to opt-out as evidence of consent to disclosure of their personal data. Rather, we anticipate suppliers will be legally obliged to share information for the purposes of the scheme, with the initial opt-out providing an opportunity to prevent this from occurring.

54. If consumer data is shared with the Delivery Body to enable them to administer the prompt, do you think that consumers should be offered an initial opt-out before that data processing?

Annex E: The current default arrangements

The current default arrangements are set by the supply licence conditions (SLC)[135]. When a domestic energy consumer's fixed term tariff expires, SLC 22C requires suppliers to offer their customers either a renewal of the fixed term contract; a new fixed term supply contract; or a new evergreen supply contract. If the customer does not accept one of these offers and does not switch supplier, then the supplier must move the customers onto a default tariff, moving them onto either the "Relevant Cheapest Evergreen Tariff" or a "Relevant Fixed Term Default Tariff".

The SLC also govern how, when a consumer moves into a new property and starts consuming energy, without first agreeing a contract, the supplier of the previous occupant must supply them through a "Deemed Contract". SLC 7.6A requires that Deemed contracts do not have a fixed term period, and they also fall within the category of default tariffs.

If a consumer actively switches onto an evergreen supply contract[136] (often referred to as Standard Variable Tariffs, SVTs) they will also remain on that tariff until they actively choose to switch off. As discussed in section 2.3.1 and as is the case for purposes of SLC 56, we are therefore defining these as default tariffs for the purposes of this consultation.

The CMA highlighted that the nature of these arrangements cause loyalty penalties. They enable passive consumption without engagement with the rest of the market, so that suppliers can charge higher prices without the consumer realising.

Default arrangements are an important part of energy supply as they ensure continuity of supply. This means that consumers do not suddenly lose power when their contract ends, which is particularly important for consumers in vulnerable circumstances, and generally enables households access to this essential service without having to choose and set up a suitable contract.

Given the importance of continuity of supply and our desire to address the factors that have caused a loyalty penalty, we would like to consider how default arrangements might be reformed to maintain continuity of supply without the need for disengaged consumers to remain with the same supplier.

[135] https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions
[136] A tariff that is for a period of an indefinite length and which does not contain a fixed term period.

Annex F: Further proposals and questions on the opt-out testing data processing and consumer communication

This annex follows on from section 3.7 and sets out our thinking on how target consumers could be selected for the opt-in switching scheme and whether an initial opt-out should be included for consumers.

F.1. Participant selection

We propose that target suppliers (see section 3.3.2) are required to choose customers that meet the target criteria (see section 3.3.1). To do this they could be required to randomly pick from their pool of customers meeting the target criteria.

Ofgem's Collective Switch trials required suppliers to provide aggregate data on how customer samples compared with the total eligible population in terms of their energy consumption, length of time on SVT and region. This approach allowed Ofgem to check that the sample was representative so that the results could be generalised.

This would also be useful for the opt-out testing, but, more data fields would also be useful to be able to test our aims (section 3.3.2) of understanding the potential distributional impacts and whether the consumer experience is different between consumer segments and whether different approaches may be desirable across them. We therefore propose to require the incumbent supplier to share this data with the body that leads on the analysis to enable this analysis function.

Given the small sample numbers, we do not think the risk of suppliers cherry picking customers for inclusion (which we discuss in the opt-in switching scheme section) is as great for the opt-out testing scheme. We therefore do not think that the Delivery Body or the Government/Ofgem should randomly pick from target supplier's pool of eligible customers. However, it may be possible for the Government and/or Ofgem to audit whether cherry picking is occurring by reviewing whether consumers entered into the trials are representative of the customer base we'd expect to be present.

55. Do you agree that target suppliers should be required to randomly pick consumers from their pool of eligible target suppliers, to determine which consumers are targeted by the testing?

56. Do you agree that incumbent suppliers should be required to share consumer characteristics data to enable analysis of the impact on testing on different consumer groups?

F.2. Initial opt-out and winning tariff selection

Once the round of consumers has been selected, we propose that the incumbent supplier could then be required to contact each selected customer informing them of the testing and offering them the ability to opt-out from having their data shared for the test's purposes. This is the initial opt-out option, before the second opt-out option from being switched.

The purpose of the initial opt-out would be to provide customers who do not want to be involved in the switching process an early opportunity to exit the scheme before their data is shared with the Delivery Body. For the avoidance of doubt, we are not proposing to rely on a customer's failure to opt-out as evidence of consent to disclosure of their personal data. Rather, we anticipate suppliers will be legally obliged to share information for the purposes of the testing, with the initial opt-out providing an opportunity to prevent this from occurring.

We propose that the target incumbent suppliers would then be required to inform the Delivery Body (depending on their precise role, this could instead by the Government and/or Ofgem), of the number of consumers who have not opt-ed out of each segment; there will be different tariffs by consumer segment, for example by payment method and online/offline. The Delivery Body or the Government and/or Ofgem will then identify the winning tariff for each segment.

We do not think that consumer data will be required for this step, just how many consumers have not opted-out in each relevant segment, who will form the tally of consumers in each segment. The tally will enable bidding suppliers in any competitive process to be aware of how many consumers they are bidding for, subject to the consumer's next opportunity to opt-out. If a tariff is being selected from the open market, (as set out in section 3.4) the Delivery Body or the Government and/or Ofgem may need to engage with the winning supplier, with the tally numbers, to ensure that the market offering will still be there at the end of the opt-out offer period.

57. Do you agree that consumers should be offered an opt-out from having their data shared?

58. Should suppliers be required to share a tally of the number of consumers who have not opt-ed out of each segment, to support processes for identifying a winning tariff?

This consultation is available from: https://www.gov.uk/government/consultations/energy-retail-opt-in-and-testing-opt-out-switching

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