

A7. Proposed amendments to guidance on contract requirements

A7.1 This Annex sets out our revised guidance on contract requirements for condition C1 to align with the proposed modifications to that condition to implement the relevant provisions of the EECC. This also includes our revisions to the guidance on end-of-contract and annual best tariff notifications from our [statement in July 2019](#). We discuss these proposed changes in section 6 of the consultation.

A7.2 The modifications to this guidance are shown as follows:

- a) The words marked in red text and highlighted indicate the insertions; and
- b) The words marked in strike-through and highlighted indicate the deletions.

A7.3 Separately, we have proposed new guidance for the provision of contract information in Annex 6 and non-coterminous linked contracts in Annex 9. Our reasons for proposing to issue this new guidance are set out in sections 4 and 6 of the consultation respectively.¹ For the purpose of the consultation, we have set out our proposed changes to this guidance separately from the proposed new guidance. If, following consultation, we proceed with issuing both sets of new guidance, we propose to incorporate it into our guidance for Condition C1 below.

Ofcom's Guidance under General Condition C1 – contract requirements

A7.4 This document sets out Ofcom's guidance under General Condition C1 (condition C1) in the following areas:

- a) Condition C1.3-C1.8 - Conditions and procedures for contract termination;
- b) Condition C1.3-C1.10 - Automatically renewable contracts;
- c) Conditions C1.6-1.9 C1.14 - Contractual modifications; and
- d) Conditions C1.23-C1.36 – end-of-contract and annual best tariff notifications.

A7.5 This guidance does not form part of condition C1. Its purpose is to assist Communications Providers (providers) to comply with the minimum requirements of condition C1 by outlining Ofcom's likely approach to investigating compliance.

A7.6 This guidance is not binding on Ofcom, and while we will take it into account, we will determine compliance with condition C1 on the basis of the individual circumstances of any given case. However, where we decide to depart from the guidance, we expect to give

¹ Ofcom, [Fair treatment and easier switching for broadband and mobile customers: proposals to implement the new European Electronic Communications Code](#), December 2019.

reasons for doing so. Words and expressions used in condition C1 shall have the same meaning when used in this guidance, unless otherwise indicated.

Identifying business customers

- A7.7 We note that the categories of customers caught by the rules varies by requirement. For example, the general disincentive to switch rule in condition C1.8 applies to all residential customers, micro and small enterprise customers and not for profit organisations, while the rule in condition C1.10 applies to residential customers and small business customers.
- A7.8 We recognise that it may, at times, be difficult for providers to identify whether a business customer would fall within the category of microenterprise, small business or small enterprise customer. Providers have informed us that they do not routinely collect or hold information about the number of employees of their business customers. Furthermore, employee numbers can fluctuate over short timescales.
- A7.9 We will take a pragmatic and flexible approach to compliance monitoring and enforcement. In assessing compliance we will consider whether providers have taken reasonable steps to identify the different categories of customers to which the requirements apply. For example, factors they may use (but not be limited to) to identify the size of business customer might include the annual communications spend of the customer and/or the number of lines taken by the customer.

Condition C1.3 C1.8 - Conditions and procedures for contract termination

- A7.10 This guidance does not form part of condition C1.3. Its purpose is to assist Communications Providers (CPs) to comply with the minimum requirements of condition c1.3 by outlining This part of the guidance outlines Ofcom's likely approach to investigating whether certain conditions or procedures for contract termination comply with condition C1.3 C1.8. It is not an exhaustive list of the types of conditions or procedures that Ofcom may consider under condition C1.3 C1.8.
- A7.11 We have also included some examples of what we consider to be good practice, identified through our monitoring and enforcement work. CPs Providers may choose to adopt these, or similar, practices.
- ~~A7.12 The guidance is not binding on Ofcom and while we will take it into account, we will determine compliance with condition C1.3 on the basis of the individual circumstances of any given case. However, where we decide to depart from the guidance, we expect to give reasons for doing so. Words and expressions used in condition C1.3 shall have the same meaning when used in this guidance.~~
- A7.13 Customers should be able to exercise choice and take advantage of competition in communications markets by being able to switch provider easily. Unnecessary difficulties can give rise to consumers suffering harm, making switching difficult or preventing it entirely in some cases.

A7.14 To ensure that customers are able to change providers without being hindered by legal, technical or practical obstacles, condition C1.8, says:

*“Without prejudice to any Commitment Period, Regulated Providers shall ensure that conditions or procedures for contract termination do not act as disincentives for Relevant Customers against changing their Communications Provider”.*²

A7.15 For the purposes of condition C1.8, “Relevant Customers” are residential customers, microenterprise and small enterprise customers and not for profit organisations. We refer to these as “customers” for this part of the guidance dealing with conditions and procedures for contract termination. “Regulated Providers” are providers of public electronic communications services.

A7.16 The rules in condition C1.8 also apply to bundles with at least an internet access service or number-based interpersonal communications service.^{3,4}

Conditions or procedures for contract termination acting as a disincentive for customers against changing their CP provider

A7.17 We consider that “conditions or procedures for contract termination” should be interpreted broadly. In particular, we consider that, as well as covering industry practices and a CP’s provider’s contractual conditions, a CP’s provider’s internal processes may also be procedures that potentially provide a disincentive to switch providers. Such internal processes need not necessarily be in writing, as it is their effect that is relevant, rather than their form. In addition, we consider that behaviour of individual customer service agents that is inconsistent with a CP’s provider’s written or established conditions or procedures could itself amount to a breach of condition C1.3 C1.8 in certain circumstances; for example, if it demonstrated a failure by the CP provider to have sufficient procedures in place to ensure agents are properly trained, or for monitoring their compliance with the internal procedures.

A7.18 We consider that to act as a “disincentive” a condition or procedure does not necessarily have to prevent an end-user a customer from terminating (although it may do so). A condition or procedure could cause unreasonable effort, hassle or undue difficulty when seeking to terminate a contract such that it acts as a disincentive for a customer even if that end-user ultimately still completes a switch of provider.

A7.19 We recognise that some end-users customers contacting CPs providers about ending their services will have chosen to do so in order to have a conversation about any offers or options available to them and to take advantage of any discounts that the CP provider might provide as a result of those conversations. This can be beneficial to the consumers customers concerned, and we are not seeking to prevent these conversations for those

² Words and expressions used in condition C1.8 shall have the same meaning when used in this guidance.

³ GC C1.1(f)

⁴ We propose to define bundle in the GCs as ‘where public electronic communications service and another service(s) and/or terminal equipment, are provided or sold by the same Communications Provider under the same or closely related or linked contracts’.

~~end-users~~ **customers** who wish to have them. However, we are also aware that other ~~end-users~~ **customers** want to terminate their services without having these conversations and in those circumstances prolonged retention activity may act as a disincentive. **CPs** **Providers** should consider the needs of these ~~end-users~~ **customers** within their conditions and procedures to ensure that they do not act as a disincentive against changing **CP** **provider**.

Contractual conditions and procedures for ending a contract

Communication options and accessibility of contract termination procedures

- A7.20 **CPs** **Providers** should offer a range of communication options for ~~end-users~~ **customers** to terminate their contracts.
- A7.21 The full range of communication options should be clearly and prominently displayed on a **CP's** **provider's** website, along with information about the steps required to end a contract.

Good practice in this area includes:

- (a) To reflect different ~~end-users~~ **customers'** preferences and needs, offering options to ~~end-users~~ **customers** to terminate contracts which include both 'real-time' and 'non-real-time' communication options. For example, by phone and/or webchat, where the ~~end-user~~ **customer** would speak directly in real-time to a customer service agent or using non-real-time options, such as by letter, email or via an online account, where they do not need to speak directly to the **CP** **provider**.
- (b) Details of each communication option (i.e. phone number, email address, link to online accounts etc.) and how and when these can be accessed could be listed on a dedicated "terminations" page on a **CP's** **provider's** website.

Identification and verification procedures

- A7.22 Where **CPs** **providers** need to verify the identity of ~~an end-user~~ **a customer** prior to their contract being terminated, these verification procedures should not themselves act as a disincentive to switch providers.

Good practice in this area includes:

- (a) making ~~end-users~~ **customers** aware if they will need to provide information to verify their identity before their termination request will be processed.
- (b) being clear about the types of identification information that the ~~end-user~~ **customer** will need to provide before their contract will be terminated.
- (c) ensuring that any verification procedure relating to contract termination is the same as required to make any other substantive change ~~to an end-user's a~~ **customer's** account (e.g. a change requiring an additional financial commitment, such as an upgrade or contract renewal).
- (d) adopting identification and verification procedures that are consistent with the communication option that the ~~end-user~~ **customer** has selected to make their termination request. For example, if ~~an end-user a~~ **customer** has made a non-real-time request, then the ~~CP~~ **provider** could have procedures in place to verify the ~~end-user's~~ **customer's** identity in the same way or obtain the ~~end-user's~~ **customer's** consent to verification via a different method.

Maximum notice periods

- A7.23 Subject to any maximum technical limits or other regulatory requirements,⁵ ~~CPs~~ **providers** should allow ~~end-users~~ **customers** to reasonably give more than the minimum period of notice.
- A7.24 ~~CPs'~~ **Providers'** conditions or procedures should not suggest that exact notice must be given by ~~end-users~~ **customers**.

Good practice in this area includes ~~CPs~~ **providers** clearly referencing any maximum notice period and the ability of ~~end-users~~ **customers** to be able to give more than the minimum notice period in their internal guidelines for customer service agents.

Internal processes for customer service agents handling termination requests

- A7.25 As noted above, we recognise that ~~CPs~~ **providers** are likely to wish to seek to retain ~~end-users~~ **customers** that express an intention to switch providers, usually through a conversation (referred to throughout this guidance as “a retention conversation”). We note that some ~~end-users~~ **customers** will welcome a retention conversation, while others will not.
- A7.26 Where the retention conversation occurs, we expect ~~CPs~~ **providers** to have procedures in place to ensure that:

⁵ The changes introduced in our Mobile Switching Statement prohibited the charging of notice periods beyond the day on which the switch occurs (with effect from 1 July 2019). See Ofcom, [Consumer Switching: Decision on reforming the switching of mobile communications services](#), 19 December 2017.

- i) customer service agents' incentive schemes do not encourage poor agent behaviour that constitutes or otherwise gives rise to a disincentive for the ~~end-user~~ customer to switch.
- ii) ~~end-users'~~ customers' intentions are recorded and actioned correctly.
- iii) customer service agents understand what retention activity is appropriate, particularly in circumstances where it is evident that ~~an end-user~~ a customer does not want to have a retention conversation.

Good practice in this area includes:

- (a) *incentive schemes that do not: (i) penalise customer service agents for terminating contracts in response to ~~an end-user's~~ a customer's request or for correctly identifying that ~~an end-user~~ a customer does not want to have a retention conversation; nor (ii) reward customer service agents for failing to process termination requests.*
- (b) *sending written confirmation to ~~end-users~~ customers once a termination request is processed.*
- (c) *ensuring customer service agents make clear notes on ~~an end-user's~~ a customer's file about any retention conversation or offers made so that they can be accessed, and taken account of, by other agents.*
- (e) *clear internal guidance, regular briefings and ongoing training for agents about how to identify if ~~an end-user~~ a customer making a termination request wants to do so without having a retention conversation, and what is appropriate retention activity in these circumstances. For example, making clear that in circumstances where ~~an end-user~~ a customer does not want to have a retention conversation, the agents understand it is not appropriate to engage in any further retention activity and that they should instead promptly process the request.*
- (f) *specific procedures in place for ~~end-users~~ customers who have made non-real-time requests as, given their preferred communication option, these ~~end-users~~ customers may be more likely to not want to have a retention conversation.*
- (g) *monitoring and quality assurance processes in place to ensure that their conditions or procedures do not act as a disincentive to switching. Advisors who fall short of the behaviours required of them are subject to an appropriate disciplinary process.*

(h) *clear written internal policies and processes for customer service agents handling termination requests (e.g. training and briefings) and regular reviews of these to ensure changes are made as required. For example, if a pattern of poor behaviour is identified via monitoring procedures, CPs providers then take steps to ensure that it does not occur in the future, and any necessary changes are made to their internal policies and processes, including guidance, training and quality assurance procedures.*

[We propose to add our guidance on non-coterminous linked contracts here if, following consultation, we proceed to issue that guidance in final form.]

Condition **C1.3** **C1.10** - Automatically renewable contracts

A7.27 — This guidance, which does not form part of condition C1.3, sets out how we are likely to apply this condition. Condition C1.3 prohibits the use of Automatically Renewable Contracts (ARCs) in the provision of fixed voice and fixed broadband services to residential Consumers and Small Business Customers (together ‘customers’ for the purposes of this Guidance). A fixed commitment period is the period beginning on the first day a contract takes effect and ending on a day falling no more than 24 months thereafter (condition C1.4). These provisions mean that CPs cannot roll forward (or automatically renew) a customer contract to a new fixed commitment period following the expiry of an initial or subsequent fixed commitment period without having obtained the Express Consent of the customer.

A7.28 This part of the guidance sets out how we are likely to apply condition C1.10 which prohibits the use of Automatically Renewable Contracts (ARCs) – these are contracts which automatically roll over into a new commitment period following the expiry of an initial or subsequent commitment period.

A7.29 Condition C1.10 says:

“Without limiting the extent of Condition C1.8, Regulated Providers must not, at the end of any Commitment Period, renew their contract with a Relevant Customer for a further Commitment Period unless they have first obtained the Relevant Customer’s Express Consent. Such Express Consent must be obtained in relation to each new Commitment Period.”

A7.30 For the purposes of condition C1.10:

- a) *“Regulated Provider”* means providers of public electronic communications services.
- b) *“Relevant Customer”* means residential and small business customers, we refer to these as customers.⁶
- c) *“Express Consent”* means “the express agreement of a Customer to contract with a Communications Provider, or to transfer their Public Electronic Communications Services(s) or port their Telephone Number(s), where the Communications Provider has obtained such consent in a manner which has enabled the Customer to make an informed choice”.

⁶ “Small business customers”, which are different to “small enterprise customers”, are defined as a customer of a communications provider “who carries on an undertaking for which no more than ten individuals work (whether as employees or volunteers or otherwise), but who is not himself a Communications Provider”.

- d) *“Commitment Period” means a period beginning on the date that contract terms agreed by a Communications Provider and a Subscriber take effect and ending on a date specified in that contract, and during which the Subscriber is required to pay for services, facilities and/or Terminal Equipment provided under the contract and the Communications Provider is bound to provide them.*⁷

Informed choice

A7.31 — ‘Express Consent’ is defined as follows:

“Express Consent” means the express agreement of a Domestic or Small Business Customer to contract with a Communications Provider in relation to each Fixed Commitment Period, where the Communications Provider has obtained such consent separately for each Fixed Commitment Period in a manner which has enabled the Domestic or Small Business Customer to make an informed choice;

A7.32 — The requirements of this definition are clear. However, we think it is important to clarify that the timing of Express Consent and method by which it is obtained are important in order for customers to be able to make an informed choice.

Method and timing for obtaining Express Consent

A7.33 Where Express Consent is given for a fixed commitment period initiated by a customer, we think it is likely to be reasonable for it to be given at any time in the process.

A7.34 In all other circumstances, CPs providers should ensure that customers have sufficient time to properly consider the deal they are being offered (including, for example, allowing them time to consider the market more generally) before setting deadlines requiring them to opt in to a further fixed commitment period.

A7.35 We have not set out specific time frames with which CPs providers must comply, however, there are certain types of behaviour that are unlikely to satisfy the requirements of condition C1.3 C1.10. These include (but are not limited to) the following examples where:

- a) A CP provider has asked a customer to provide a “one off” consent which purports to cover all fixed commitment periods that that Consumer or Small Business Customer may subsequently enter into (“stacking”);
- b) Consent is sought at a time which is too far in advance of the ending of the fixed commitment period for a customer to reasonably know what other offers may be available at that time;
- c) A CP provider contacts a customer either on the day that their fixed commitment period is due to expire, or very shortly before that day, and requests their consent to enter into a further fixed commitment period in circumstances where that customer has not been given an opportunity to consider what other offers may be available.

⁷ GC C1.11 requires that the commitment period can be no more than 24 months in duration.

A7.36 We expect CPs providers to have reasonable steps in place to prevent stacking and to ensure reasonable and appropriate timing for obtaining Express Consent. Therefore, other things being equal, it is generally likely to be reasonable for Express Consent to be obtained by CPs providers no sooner than six months before the end of each fixed commitment period.

Small Business Customers

A7.37 The definitions of a Domestic and Small Business Customer and Domestic or Small Business Customer for the purposes of condition C1.3 are consistent with the definition of Domestic and Small Business Customer in Section 52(6) of the Communications Act 2003 which is reproduced here for ease of reference.⁸

“Domestic and Small Business Customer” means, in relation to a Communications Provider, a Customer of that Provider who is neither:

(a) himself a Communications Provider; nor

(b) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

A7.38 This means that the prohibition in condition C1.3 applies to small business customers with 10 or less employees (the ‘10 employee threshold’).

A7.39 We recognise that it may, at times, be difficult to identify whether or not a customer has 10 employees or less. CPs have informed us that they do not routinely collect or hold information about the number of employees of their business customers. Furthermore, employee numbers can fluctuate over short timescales. We accept, therefore, that estimates as to whether or not a customer falls within the 10 employee threshold may not be precise.

Approach to Enforcement assessing compliance

A7.40 We note that other regulatory requirements also apply to small business customers as defined by Section 52(6) of the Act. For example, condition C4 requires that an alternative dispute resolution (ADR) scheme be made available to small business customers. We note also that we have indicated elsewhere that we will take a pragmatic and flexible approach to compliance monitoring and enforcement for these requirements. For example, in guidance on condition C4 we said “...we would be satisfied if, rather than having to contact the Complainant to determine whether they have ten or fewer employees (and is therefore potentially ‘eligible’ to take a case to ADR), a CP instead had reasonable processes in place for determining whether business customers are likely to be small businesses for the

⁸ The General Conditions contain two definitions which broadly mirror the statutory definition of “Domestic and Small Business Customer”: the definition of “Domestic and Small Business Customer”/“Domestic or Small Business Customer” that includes customers that are consumers and customers that are small businesses, and the definition of “Small Business Customer” that applies to small business customers only.

purpose of this obligation (for example, making an assessment based on annual communications expenditure of that customer)."

A7.41 — We will take an approach consistent with this to enforcement of condition C1.3. In assessing compliance, we will consider whether CPs have taken reasonable steps to identify business customers to whom the prohibition applies. For example, they may (but not be limited to):

i) Identify the size of the business by the annual communications spend and ensure that packages without ARCs are targeted to low spending small business customers.

ii) Identify the size of the business by the number of lines it has, and ensure that packages without ARCs are targeted to small business customers with few lines.

iii) Ensure that where customers self select an ARC (for example, by purchasing online), they may easily identify themselves as being 'eligible' for an ARC.

A7.42 In addition, in assessing compliance, we will expect CPs providers to take reasonable steps to inform staff and existing ARCs customers affected by the amendment to condition C1.3 of these new regulations of the regulations in condition C1.10. For example, CPs providers may:

a) Ensure that sales staff are comprehensively briefed on the regulations.

b) Provide clear information to customers about the regulations on ARCs.

c) Ensure that sales scripts and contract negotiations include necessary information about, for example, migration process, key dates and charges, and any termination procedures.

A7.43 We also expect that CPs providers will take a reasonable approach to redress in cases where a small business customer has been sold an ARC inadvertently. Generally, we would expect the CP to enable the customer to exit the contract or move to another package penalty free in such cases (after the ending of any fixed commitment period). We believe this flexible approach is an appropriate way to monitor compliance and enforce the small business prohibition for businesses with 10 or less employees. While condition C1.22 requires providers to ensure that customers have the right to exit the contract with a maximum one month notice period when a contract is automatically prolonged, in circumstances where a customer has been inadvertently sold an ARC, we would expect the provider to proactively alert the customer of their right to exit the contract and allow them to exit the contract after a maximum one month notice period.

Guidance on contractual modifications under conditions C1.6–C1.9 C1.14

A7.44 — The guidance below, which does not form part of conditions C1.6–C1.9, sets out how we are likely to apply conditions C1.6–C1.9 in relation to changes CPs make to their consumer and small business contracts.

A7.45 — Condition C1.6 states:

C1.6 Regulated Providers shall:

(a) give their Subscribers adequate notice not shorter than one month of any contractual modifications likely to be of material detriment to that Subscriber;

(b) allow their Subscribers to withdraw from their contract without penalty upon such notice; and

(c) at the same time as giving the notice in Condition C1.6(a), inform the Subscriber of its ability to terminate the contract without penalty if the proposed modification is not acceptable to the Subscriber.

A7.46 — Conditions C1.7 to C1.9 set out increases in price that are contractual modifications likely to be of material detriment to a Consumer or Small Business Customer for the purposes of condition C1.6.

A7.47 This part of the guidance sets out how we are likely to apply condition C1.14. In particular, it sets out how we would expect providers to notify customers of any contractual modifications, and of their right to exit the contract for modifications that are not exclusively to the benefit of the customer.

A7.48 Condition C1.14 says:

“Regulated Providers shall:

(a) give their Relevant Customers notice not shorter than one month of any contractual modifications relating to a Relevant Communications Service, or a Bundle or any elements thereof, that is provided by them;

(b) give their Relevant Customers the notice in Condition C1.14(a) in a clear and comprehensible manner on a Durable Medium; and

(c) at the same time as giving the notice in Condition C1.14(a), inform the Relevant Customer of their right to terminate the contract(s) in accordance with Condition C1.15, at no additional cost other than the charges set out in Condition C1.16, if the proposed modifications are not acceptable to them.”

A7.49 Condition C1.15 says:

“When notifying a contractual modification pursuant to Condition C1.14, Regulated Providers shall allow the Relevant Customer to terminate their contract and any contract(s) forming part of a Bundle with that contract, within one month after notification, unless the proposed modification is exclusively to the benefit of that Relevant Customer, is of a purely administrative nature and has no negative effect on the Relevant Customer, or is directly imposed by law.”

A7.50 For the purposes of condition C1.14 and condition C1.15:

- a) *“Regulated Providers”* are providers of public electronic communications services when they provide these services to end-users, except when they provide number-independent interpersonal communications services. They only apply to providers of machine to machine transmission services in so far as the end-user concerned is a residential customer, microenterprise and small enterprise customer or not for profit organisation.
- b) *“Relevant Customers”* are all end-users, except when the rules are applied to bundles where the *“Relevant Customers”* are residential customers, microenterprise and small enterprise customers, and not for profit organisations.
- c) *“Bundle”* is a bundle comprising at least an internet access service or number-based interpersonal communications service.

A7.51 The scope of this part of the guidance applies to modifications made to contracts for micro and small enterprises and not for profit organisations in addition to residential customers and businesses with no more than 10 employees. We consider that these groups of customers are likely to have similar bargaining positions and should be protected by the guidance in the same way.

Changes to contractual prices

Application to bundles

A7.52 — In some circumstances, communications services may be marketed and sold to subscribers together as part of a bundle. Such a bundle may include some services subject to conditions C1.6 to C1.9 and some not. It will be a question of fact and proper contractual construction as to whether all the services comprised in any such bundle are:

- i) governed by one set of terms and conditions that comprise a single contract;
- ii) purportedly subject to separate terms and conditions for each service but which in reality comprise a single contract (as may be the case where, for example, the subscriber is required to pay a single price for the bundle as a whole); or
- iii) subject to separate terms and conditions for each service such that each service can properly be said to be subject to separate contracts.

A7.53 — In the first two circumstances, Ofcom is likely to treat conditions C1.6 to C1.9 as applying to the whole contract even if there are elements within it which, on their own, are not subject to that condition. We would be likely to regard any mid-contract increase in the agreed core subscription price to be materially detrimental (or likely to be materially detrimental) for the purposes of conditions C1.6 to C1.9.

A7.54 Where a provider's contract has the effect of binding a customer to pay a different Core Subscription Price⁹ at different times during their commitment period, the requirements in condition C1.14 will not apply, provided that those terms were sufficiently transparent such that the customer can be said, at the time they signed the contract, to have agreed to the different amount they would have to pay at different times. In paragraphs [A6.12-A1.15] of our guidance on the Contract Information we provide examples of how this information could be set out in terms that would be clear and useful for customers.

Notification of ~~contract~~ contractual modifications

A7.55 We expect ~~CPs~~ providers to actively communicate to their ~~subscribers~~ customers any proposed contractual modifications. ~~CPs~~ Providers need to ensure that ~~subscribers~~ customers know how such changes will be communicated to them. For example, the terms and conditions should state the method(s) used to communicate contractual modifications and timescales for doing so.

Notification methods

~~A7.56 — Notifications should be set out with due prominence in order to attract the subscriber's attention. They should be in a form which subscribers can reasonably be expected to read.~~

A7.57 Notifications of proposed contractual modifications should be set out in a clear and comprehensible manner on a durable medium.

A7.58 We consider that it is particularly important for notifications of changes that are not exclusively to the benefit of customers to be set out with due prominence and in a form which customers can reasonably be expected to read. This is to help ensure that the customer is made aware of such changes and also of their right to exit their contract to avoid those changes if they so wish. Some examples of how providers could do this are below.

A7.59 Letters and emails (if that is the preferred means of communication chosen by the subscriber) are the most obvious examples of notifications.

- a) Hard copy notifications should be clearly marked as such in a prominent manner e.g. on the front of the envelope/communication material/the customer's bill, and possibly in more than one place in order to attract the ~~subscriber's~~ customer's attention.
- b) Providers should consider issuing the modification notification on a separate piece of paper from any marketing material. This could help to ensure that the notification does not get lost in other communications that the ~~subscriber~~ customer receives from the provider but may not necessarily read.

⁹ This is defined in the GCs as "the sum (however expressed in the contract) that the Subscriber is bound to pay to a Communications Provider at regular intervals for services and/or facilities the Communications Provider is bound to provide in return for that sum. It does not include sums payable for additional services or facilities (or the additional use of services or facilities) that the Subscriber is only liable to pay for if the additional service or facility is used".

- c) ~~Other printed material, such as pamphlets or magazines, may be used but whether this would be deemed sufficient will depend on how transparent it is made to the subscriber upfront that such publications may contain important information. Not all customers read pamphlets and magazines sent by their CP.~~
- d) Email notifications of ~~contract~~ **contractual** modifications should be clearly marked as such in the subject line of the email.
- e) We do not consider that asking ~~subscribers~~ **customers** to regularly check their ~~CP's~~ **provider's** website for possible changes to their contract is acceptable.

A7.60 Notifications may also be sent by SMS (text message). We are aware of the need to keep SMS relatively simple and concise in the interest of effective messaging. If a provider wishes to send notifications by SMS, we would expect them to ensure that key pieces of information are effectively conveyed in the main body of the SMS (see below).

Content of notification

- A7.61 The notification **of the contractual modification and the customer's right to exit** must be clear and easy to understand. For example, it should make the customer aware of the nature of the contractual modification, the likely impact on him/her, and, ~~where relevant,~~ set out clearly ~~what action the subscriber can take to avoid the impact, should he/she wish to~~ that they have the right to terminate the contract without incurring additional costs, such as early termination charges.
- A7.62 Information about the ~~subscriber's~~ **customer's** termination rights should be made clear upfront. For example, on the front page of a hard copy notification, in the main email message **or SMS notification** rather than via a link in the message, or on the actual webpage of the modification notification rather than via a link to another page.

Notification of termination rights

Customer's right to terminate following contractual modifications

- A7.63 Where it arises, a customer's right to terminate their contract must be real and capable of effective exercise in practice.
- A7.64 To that end, where the ~~subscriber~~ **customer** ~~does have the ability to terminate, this~~ **has the right to terminate a bundle of services, and/or terminal equipment where applicable, they should have the choice to exit or retain some or all of those elements if they so wish. The right to terminate** should be made clear in the main body of the notification rather than in a footnote or a reference to the relevant clause of the terms and conditions.
- ~~A7.65 The minimum timescale that CPs should give subscribers the ability to exit the contract for any relevant changes is 30 days. This is to enable subscribers to consider the proposed contractual modification and give them time to research their options.~~
 - ~~i) When this 30 day period for termination starts and ends should be made clear to the subscriber in the notification they receive from the CP of the proposed changes.~~

ii) When the cancellation of the services actually takes effect following a subscriber's request to terminate should also be made clear.

iii) CPs may give their customers a period of more than 30 days in which to withdraw from the contract if they wish to do so.

A7.66 The notification should also set out any fees payable by the customer on termination. This would include fees for using the service in the period before the contract is terminated and fees for any retained terminal equipment.

A7.67 Providers must allow customers to exercise their right to terminate the relevant contract(s) within one month of notification. We would expect providers to make clear in the notification the deadline by which the customer is able to exercise their right to terminate, i.e. it should specify the date by when the customer can terminate without incurring an early termination charge. Providers may give their customers a period of more than one month in which to exercise their right to terminate their contract if they wish to do so.

A7.68 The terms and conditions or other practices CPs providers apply (whether in contracts for bundled services or other contracts relating to that in respect of which a relevant price rise occurs) in respect of contract termination are also important considerations. Terms and/or practices which frustrate the practical effect of condition C1.6 C1.14 are liable to attract suspicion of non-compliance with the relevant rules.¹⁰

A7.69 CPs Providers should also keep in mind the need to comply with all their obligations under the General Conditions, including as to switching processes. This is particularly relevant where the rules provide for a gaining provider-led process under which a customer is able to switch providers by contacting a new provider and without needing to contact their existing one.

A7.70 Neither condition C1.6 C1.14 itself nor this guidance requires that a customer must exercise their rights under that condition by contacting their existing provider. One way the CP provider making contract modifications that are not exclusively to the benefit of the customer could meet its obligations in a relevant case is by telling the customer that the condition C1.6 C1.14 termination rights may be exercised by contacting a new provider switching provider using a regulated switching process.

Guidance on Conditions C1.10-1.21 C1.23 – C1.36 - end-of-contract and annual best tariff notifications

A7.71 This guidance goes not form part of the General Conditions. Its purposes is to assist Communications Providers (CPs) to comply with Conditions C1.10 C.21 by outlining This part of the guidance outlines Ofcom's expectations as to what information should be included in the notifications sent to consumers in compliance with those conditions Conditions C1.23-C1.36, and how those notifications should be sent. In particular, This

¹⁰ In this regard, condition C1.3 C1.8 is also relevant.

guidance does not contain an exhaustive list of the information to be included in notifications for consumers (this is set out in Conditions ~~C1.11~~ **C1.24** and ~~C1.18~~ **C1.33**).

~~A7.72 — Words and expressions used in Conditions C1.1 — C1.21 have the same meaning when used in this guidance.~~

A7.73 This guidance only applies to notifications sent to relevant customers who are consumers in accordance with Conditions ~~C1.10 C1.21~~ **C1.23 - C1.36**.

A7.74 **References to a “bundle” in this part of the guidance (paragraphs A7.71 to A7.124) refer to the definition of that term in Condition C1.2(d) (i.e. a bundle comprising an internet access service and/or a number-based interpersonal communications service).**

Conditions ~~C1.11~~ **C1.24 and ~~C1.18~~ **C1.33** – Content of end-of-contract and annual best tariff notifications**

Details of services provided under the contract

A7.75 Conditions ~~C1.11(b)~~ **C1.24(b)** and ~~C1.18(c)~~ **C1.33(c)** require end-of-contract and annual best tariff notifications, respectively, to include “*details of the services provided by the Regulated Provider to the ~~Subscriber~~ **Relevant Customer** under that contract.*”

A7.76 In complying with these requirements, we expect the **CP provider** to give the subscriber a comprehensive list of all services **and terminal equipment** which form part of the contract subject to the notification. This would include:

- a) all ancillary services currently provided under that contract; and
- b) any service supplied by a third party, if the provision of that service to the subscriber forms part of that contract.

A7.77 The full list of all services does not need to be listed in the notification itself, provided that:

- a) the subscriber’s main services, and aspects of those services, are listed in the notification itself;
- c) the full list of all services is provided in a single location;
- d) that location is easily accessible to the subscriber; and
- e) a reference to the location of that list is included in the notification.

A7.78 For example, mobile and broadband **CPs providers** provide call, SMS and data services, with associated connection speeds and allowances. We consider these to be the main services which, combined with the associated aspects of those services, form the service package the subscriber receives from their **CP provider**. They must be listed in the notification itself.

A7.79 The **CP provider** may also provide other services to the subscriber as part of the contract, for example over-the-top content services for music and video streaming or cloud storage, but we would not consider these to be the subscriber’s main services. These services can be listed in another location provided that the conditions above are met. The other

location could be, for example, an annex to the notification. The annex should then be referenced in the main part of the notification. Alternatively, the CP provider could provide the full list of services in an online location and provide a link to that location in the notification.

A7.80 Where a provider is required to list terminal equipment, it should consider whether this forms part of the subscriber's main services under the contract. This may differ depending on the type of contract and the importance which subscribers attach to the terminal equipment. For example, a mobile handset is likely to form part of the subscriber's main services and should be listed in the notification itself.

Details of any changes to services provided under the contract because the fixed-commitment period is ending

A7.81 Condition ~~C1.11(i)~~ C1.24(j) requires an end-of-contract notification to include "details of any changes to the services referred to in [Condition ~~C1.11(b)~~ C1.24(b)] that will come into effect because the Fixed Commitment Period for that contract is ending."

A7.82 In complying with this requirement, CPs providers should apply the principles described above in paragraphs ~~A2.5-A2.9~~ A1.75 to A1.80 to set out the changes to the listed services that will come into effect because the fixed-commitment period is ending. Any changes to the main services provided under the contract, and the associated aspects of those services, should be included in the notification itself. A full list of changes to the services provided under the contract may be listed elsewhere (subject to compliance with the requirements described above).

Details of other contracts taken with the same provider and/or as part of a bundle

A7.83 Conditions ~~C1.11(e)~~ C1.24(e) and ~~C1.18(e)~~ C1.33(e) require end-of-contract and annual best tariff notifications, respectively, to include "details of other contracts for Public Electronic Communications Services between the Regulated Provider and the ~~Subscriber~~ Relevant Customer."

A7.84 Conditions C1.24(f) and C1.33(f) require end-of-contract and annual best tariff notifications, respectively, to include "details of other contracts between the Regulated Provider and the Relevant Customer which form part of a Bundle with the contract for the Relevant Communications Service."

A7.85 We expect the "details of other contracts" to comprise a list of the following contracts:

- a) ~~if termination of the contract subject to the notification (the "primary contract") triggers an impact on another contract for public electronic communications services between the CP and the subscriber (the "secondary contract"), then the secondary contract must be listed; and~~
- b) ~~if termination of a secondary contract would trigger an impact on the primary contract, then the secondary contract must be listed.~~

- a) in relation to C1.24(e) and C1.33(e), linked contracts for public electronic communications services (i.e. linked to the contract subject to the notification); and
- b) in relation to C1.24(f) and C1.33(f), contracts that form part of a bundle with the contract subject to the notification. In this context, a bundle must include an internet access service or number-based interpersonal communications service.¹¹

A7.86 — An impact from primary to secondary contract (or vice versa) could be a financial or other type of impact (e.g. the loss of a discount, automatic termination, changes to terms and conditions or change to services or allowances).

A7.87 By “linked contracts”, we mean two or more contracts which present a dependency such that:

- a) termination of a contract (the “primary contract”) triggers an impact on another contract (the “secondary contract”); and/or
- b) termination of a secondary contract triggers an impact on the primary contract.

A7.88 We consider the following types of dependencies to be relevant in this context:

- a) **Technical dependency** – where a customer would lose, or be impaired in using, one element of a bundle when terminating another.
- b) **Contractual dependency** – where there are links between the rights or obligations for the provision of different elements of the bundle.
- c) **Financial dependency** – where any prices, tariffs or charges for the provision of one element of the bundle are contingent on taking another element.

A7.89 This is not an exhaustive list and there may be other types of dependency that would fall within the definition of a “linked contract”.

A7.90 — In the remainder of this guidance, we refer to these secondary contracts described in paragraph 55(a) and (b) as “financially linked or interdependent”.

How to terminate that contract

A7.91 Condition C1.11(f) C1.24(g) requires an end-of-contract notification to include information on “how the Subscriber Relevant Customer may terminate that contract”.

A7.92 In complying with this requirement, we expect CPs providers to take account of our guidance in relation to Condition C1.3 C1.8 on conditions and procedures for contract termination.¹²

¹¹ See paragraph A1.74.

¹² Paragraphs A7.10 to A7.27 above.

Options available to the subscriber relevant customer

- A7.93 Condition C1.11(k) C1.24(l) requires an end-of-contract notification to include “details of the options available to the Subscriber Relevant Customer at the end of the Fixed Commitment Period for that contract”.
- A7.94 Condition C1.18(g) C1.33(h) requires an annual best tariff notification to include “details of the options available to the Subscriber Relevant Customer”.
- A7.95 We expect “details of the options available” in both contexts to include advice to subscribers that they can:
- stay on their existing contract;
 - switch to a new contract with the same CP provider (including but not limited to those referred to as part of the provider’s best tariffs);
 - switch to a new contract with a different CP provider; and
 - for subscribers on bundled handset and airtime mobile contracts only that form part of a bundle, switch to a SIM-only deal.
- A7.96 The advice should also inform subscribers that some CPs providers may offer new customers better deals and that they may get a better deal if they bundle the purchase multiple services they have with together from that or any other CP provider.

The Provider’s best tariffs

- A7.97 Conditions C1.11(l) C1.24(m) and C1.18(h) C1.33(i) require end-of-contract and annual best tariff notifications, respectively, to include “the Regulated Provider’s best tariffs.”
- A7.98 For subscribers who are consumers, we expect this to consist of the following tariffs, where applicable:
- a tariff, based on the services the subscriber receives, that is the cheapest available to that subscriber;
 - a tariff, based on the services the subscriber receives, that is the cheapest tariff available to any subscriber (if not the same as in (a));
 - unless the CP provider can demonstrate that it is not relevant to the subscriber’s service(s), a tariff based on the subscriber’s usage, that is the cheapest available to that subscriber (if not the same as (a));
 - where the subscriber has a bundled mobile handset and airtime contracts that form part of a bundle, the cheapest available SIM-only tariff based on the services the subscriber currently receives; and
 - where a CP provider chooses to include one, an upgrade tariff.
- A7.99 Where a tariff is based on the services the subscriber receives, CPs providers should give a tariff consisting of a package of services that, in relation to the subscriber’s main services

and the associated aspects of those services,¹³ are most similar to the services the subscriber currently receives.

- A7.100 Where a tariff is based on the subscriber's usage, CPs providers should give a tariff consisting of a package of services that takes into account the subscriber's likely usage of their main services and the associated aspects of those services.
- A7.101 The cheapest available tariff means that at the lowest cost published by that CP provider and generally available to the public, for example on its website or in its stores. However, the CP provider may choose instead to present an alternative tariff to the subscriber as the cheapest available, provided that it is lower cost than the cheapest generally available tariff.
- A7.102 Tariffs presented as available to a subscriber must be available to them as of the date of the notification. In relation to end-of-contract notifications, they should remain available at least until the end of the subscriber's fixed commitment period. In relation to annual best tariff notifications, they should remain available for at least 30 days from the date of the notification.
- A7.103 CPs Providers should state clearly if a subscriber is not eligible for a tariff, explain why they are not eligible and why the tariff is being shown to them.
- A7.104 If CPs providers choose to include an upgrade tariff, it should be one which, with reasonable objective justification, they consider to represent a subscriber's best tariff.
- A7.105 If multiple public electronic communications services are provided under the contract subject to the notification (e.g. a dual or triple play contract), the tariffs the CP provider presents should be for a bundle in relation to those services should consider all of those services when determining its best tariffs in accordance with paragraph A7.98.
- A7.106 If Where:
- a) the CP provider provides multiple public electronic communications services to the subscriber, but some are provided under the contract subject to the notification and some under a financially linked or interdependent other linked contract(s)¹⁴; or
 - b) the service provided or sold under the contract subject to the notification forms part of a bundle with services or terminal equipment provided or sold under any other contract(s),
- the tariffs the CP provider presents should be for a bundle in relation to those services consider the services / terminal equipment provided or sold under all of the contracts when determining its best tariffs in accordance with paragraph A7.98 in the following circumstances:

¹³ We discuss at paragraphs A2.8 and A2.9 A7.78-A7.80 what we mean by a subscriber's main services, and the associated aspects of those services.

¹⁴ See paragraph A2.8 and A2.9 A7.87-A7.89 for an explanation of this term.

- a) in an end-of-contract notification, if either:
 - i) the 31-day window¹⁵ for the financially linked or interdependent contract subject to the notification overlaps with the 31-day window for the other contract(s) subject to the notification; or
 - ii) the financially linked or interdependent other contract(s) is (are) not subject to a fixed commitment period when the notification is sent,
- b) in an annual best tariff notification, if the financially linked or interdependent other contract(s) is (are) not subject to a fixed commitment period when the notification is sent.

Conditions C1.13 C1.27 and C1.14 C1.28 – how to send end-of-contract notifications

Timing

- A7.107 Condition C.13 C1.27 requires CPs providers to send end-of-contract notifications in “a timely manner, before the end of the Subscriber Relevant Customer’s Fixed Commitment Period.”
- A7.108 In complying with this requirement in relation to subscribers who are consumers, we expect CPs providers to send notifications between 10 and 40 days before the end of the fixed commitment period (we refer to this time period elsewhere in this guidance as the “31-day window”).¹⁶
- A7.109 Where a consumer is approaching the end of the fixed commitment period of more than one contract, we expect CPs providers to aggregate the end-of-contract notifications into a single message if:
- a) the contracts subject to the notifications are financially linked or interdependent linked contracts;¹⁷ and
 - b) the 31-day windows for those contracts overlap.¹⁸
- A7.110 The aggregated notification should then be sent within the earlier of the 31-day windows.

Prominence

- A7.111 Condition C1.14 C1.28 requires CPs providers to send end-of-contract notifications in “a prominent manner.”

¹⁵ See paragraph A2.33 A7.108 for an explanation of this term.

¹⁶ This is subject to an exception in relation to aggregated notifications, as set out in paragraph A2.35 A7.110.

¹⁷ See paragraphs A2.13 to A2.15 A7.87-A7.89 for an explanation of this term.

¹⁸ CPs Providers may also choose to aggregate notifications (including aggregating an end-of-contract and annual best tariff notification) in other circumstances, subject to compliance with the General Conditions and the remainder of this guidance.

- A7.112 In complying with this requirement in relation to subscribers who are consumers, we expect CPs providers to provide information in an end-of-contract notification with the following given first:
- the date on which the fixed commitment period for that contract will end;
 - the current monthly subscription price paid by the subscriber and the monthly subscription price that will come into effect once the fixed commitment period ends.
- A7.113 The provider's best tariffs should come at the end of the notification and should be given equal prominence to one another.
- A7.114 Where an end-of-contract notification is sent via an SMS, we expect the following information to appear in the SMS message:
- the date on which the fixed commitment period for that contract will end;
 - the monthly subscription price currently paid by the subscriber;
 - the monthly subscription price that will come into effect once the fixed commitment period ends;
 - details of the options available at the end of the fixed commitment period; and
 - a message that further information is available, including tariffs that the provider is required to tell the subscriber about, and an indication of where that information is available.
- A7.115 The remaining information required by Condition C1.11-C1.24 should be made available to the subscriber in a single location, which is referred to in paragraph A2.39e-A1.114e).
- A7.116 Condition C1.14 C1.28 also requires that "[i]f the Subscriber Relevant Customer is a Consumer, the End-of-Contract Notification must also be separate and distinct from any other communication". This does not prevent a CP provider from aggregating notifications in line with this guidance.

Condition C1.19 C1.34 and C1.20 C1.35 – how to send annual best tariff notifications

Timing

- A7.117 Condition C1.19 C1.34 requires CPs providers to send an annual best tariff notification to a subscriber who is a consumer "at least once in every 12-month period".
- A7.118 We expect CPs providers to comply with this requirement as follows:

- a) For contracts that are already in force at the date of entry into force of Condition C1.19 C1.34, the first annual best tariff notification should be sent within 12 months of that date. An exception to this is where the contract is subject to a fixed commitment period when Condition C1.19 C1.34 enters into force. The subscriber will in this case receive an end-of-contract notification prior to the end of their fixed commitment period. The first annual best tariff notification should then be sent within 12 months following the date on which the end-of-contract notification was sent.
- b) For contracts entered into after the date of entry into force of Condition C1.19 C1.34, the first annual best tariff notification must be sent within the first 12 months of the contract term. An exception to this is where the contract contains a fixed commitment period. In that case, the annual best tariff notification should be sent within 12 months of the date on which the CP provider has sent an end-of-contract notification in relation to that contract.
- c) Second and subsequent annual best tariff notifications should then be sent within 12 months of the previous one.
- d) If a subscriber has two or more contracts that are not subject to a fixed commitment period and those contracts are financially linked or interdependent linked contracts¹⁹, the CP provider should aggregate the annual best tariff notifications for those contracts into a single communication (we would still expect the CP provider in these circumstances to observe the guidance at a) to c) above).²⁰

Prominence

- A7.119 Condition C1.20 C1.35 requires CPs providers to send annual best tariff notifications to subscribers who are consumers in “a prominent manner.”
- A7.120 In complying with this requirement, we expect CPs providers to provide information in the annual best tariff notification with the following given first:
- a) the message that the contract is not subject to a fixed commitment period; and
 - b) the current monthly subscription price under that contract.
- A7.121 The provider’s best tariffs should come at the end of the notification and should be given equal prominence to one another.
- A7.122 Where an annual best tariff notification is sent via an SMS, we expect the following information to appear in the SMS message:
- a) a message that the fixed commitment period for that contract has ended;
 - b) the current monthly subscription price paid by the subscriber under that contract;

¹⁹ See paragraphs A2.13 to A2.15 A7.87-A7.89 for an explanation of this term.

²⁰ CPs Providers may also choose to aggregate notifications (including aggregating an end-of-contract and annual best tariff notification) in other circumstances, subject to compliance with the General Conditions and the remainder of this guidance.

- c) details of the options available to the subscriber;
- d) a message that further information is available, including tariffs that the provider is required to tell the subscriber about, and an indication of where that information is available.

A7.123 The remaining information required by Condition ~~C1.18~~ C1.33 should be made available to the subscriber in a single location, which is referred to in paragraph ~~A2.47d)~~ A1.122(d).

A7.124 Condition ~~C1.20~~ C1.35 also requires ~~CPS~~ providers to send annual best tariff notifications to subscribers who are consumers via a durable medium “*that is separate and distinct from any other communication*”. This does not prevent ~~CPS~~ providers from aggregating notifications in line with this guidance.